

## LABORATORY SERVICES AGREEMENT FOR COVID 19 TESTING

This Laboratory Services Agreement (“Agreement”), made as of the date of the last signature below (“Effective Date”), is by and between The Monterey County on behalf of **Natividad Medical** (“Client”) and **BIO-REFERENCE LABORATORIES, INC.** (“Laboratory”). This Agreement is applicable solely to the provision of the COVID-19 Test, as defined below. To the extent that Client and Laboratory have executed a separate laboratory services agreement for other testing, this terms of this Agreement shall control for COVID-19 Tests.

### *RECITALS*

**WHEREAS**, Laboratory is a duly licensed and accredited high-complexity clinical laboratory and is qualified as a P2 lab or higher as defined by the biosafety level criteria set forth by the Center for Disease Control and Prevention (the “CDC”);

**WHEREAS**, Laboratory utilizes primarily the Roche testing platform approved by the Food and Drug Administration (“FDA”), utilizes the CDC testing platform, and utilizes its own PCR-based laboratory developed test for the detection of the SARS-CoV-2 virus that meets the current FDA assay requirements (the “COVID-19 Test”);

**WHEREAS**, Client desires to contract with Laboratory to provide the COVID-19 Test for its patients and Laboratory desires to provide such COVID-19 Test.

**WHEREAS**, this Agreement supersedes any existing agreement between Laboratory and Client.

**NOW THEREFORE**, in consideration of the foregoing premises and mutual promises herein contained, and intending to be bound legally hereby, Laboratory and Client agree as follows:

### **1. COVID-19 TEST SERVICES**

- 1.1. COVID-19 Test.** Laboratory agrees to perform, upon request by Client and to the extent within its capabilities, COVID-19 Tests for patients of Client. Client acknowledges that in light of the national demand for the COVID-19 Test, the prioritization guidelines of the CDC, and the future resource limitations that may affect the availability of the COVID-19 Test, Laboratory will use good faith efforts to perform the volume of COVID-19 Tests requested by Client, but cannot guarantee the availability of COVID-19 Tests.
- 1.2. Specimen Collection.** Client shall be responsible for performing or arranging for the collection of specimens that will be sent to Laboratory for the COVID-19 Test, including the provision of all collection supplies. Client shall be responsible for the delivery of such specimens to Laboratory. Client agrees that Laboratory shall not be responsible for inadequate specimen collection, mislabeling of specimens, or other collection-related errors.
- 1.3. COVID-19 Test Orders.** Laboratory and Client agree that the COVID-19 Test can only be performed on nasopharyngeal swab specimens. Each specimen must be accompanied by a valid order from a healthcare provider who is authorized to order the COVID-19 Test under the laws of the State of Virginia (an “Authorized Provider”). Client shall be responsible for ensuring that all orders for COVID Tests shall be made by an Authorized Provider.
- 1.4. Consents & Authorizations.** Client shall obtain all consents and authorizations from patients as may be required by applicable law to enable Laboratory to perform the COVID-19 Test and report the results thereof to Client and Authorized Providers. Upon request, Client shall provide Laboratory with a copy of such consents and authorizations.



**1.5. Report Delivery.** Laboratory will transmit COVID-19 Test results to Client within Laboratory's then-current turnaround time schedule. Client shall be solely responsible for the delivery of the COVID-19 Test results to Authorized Providers and patients, and Laboratory shall have no responsibility for the delivery of the COVID-19 Test results to Authorized Providers and patients.

**1.6. Consultation.** Laboratory staff shall be available 365 days per year, 7 days per week, and 24 hours per day to consult with Client and Authorized Providers by telephone (numbers available at [www.bioreference.com/contact-us/](http://www.bioreference.com/contact-us/)) to discuss Laboratory's procedures and to provide the status of COVID-19 Test results.

**2. TERM AND TERMINATION.** This Agreement shall commence on April 23, 2020 through April 22, 2021.. This Agreement may be terminated by either party at any time, with or without cause, by giving the other party thirty (30) days prior written notice. This Agreement shall have an initial term of one (1) year (the "Initial Term") and shall renew only by an instrument in writing and signed by Natividad and Laboratory.

### **3. FEES, INVOICING AND PAYMENTS**

**3.1. Fees.** Client agrees to pay Laboratory One Hundred Dollars (\$100.00) per specimen submitted for the COVID-19 Test performed by Laboratory.

**3.2. Invoicing.** On a monthly basis, Laboratory shall submit a detailed written invoice to Client in connection with COVID-19 Tests rendered under this Agreement.

**3.3. Payment Procedure.** Laboratory shall submit to the Contract Administrator an invoice on a form acceptable to NMC. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

**3.4. Pricing is Confidential MUTUAL CONFIDENTIALITY.** Each party will maintain as confidential any information furnished or disclosed to one party by the other party, whether disclosed in writing or disclosed orally, relating to the business of the disclosing party, its customers, or its patients. Each party will use the same degree of care to protect the confidentiality of the disclosed information as that party uses to protect the confidentiality of its own information, but not less than reasonable care. Each party will disclose such information only to its employees having a need to know such information to perform the transactions contemplated by this Agreement. The obligation to maintain the confidentiality of such information will not extend to information in the public domain at the time of disclosure, or to information that is required to be disclosed by law or by court order and will expire five years after this Agreement terminates or expires. This Agreement is a public record subject to disclosure pursuant to a request made under the California Public Records Act ("CPRA").

### **4. ACCREDITATION AND COMPLIANCE**

**4.1. Laboratory.** Laboratory's COVID-19 Test facility is and shall remain duly licensed under applicable law. Reasonable documentation of such credentials shall be provided upon request. Laboratory shall comply with applicable standards under the Clinical Laboratory Improvement Amendments of 1988 ("CLIA") and College of American Pathologists ("CAP").

**4.2. HIPAA Compliance.** Both parties agree to comply with applicable provisions of the Administrative Simplification Section of the Health Insurance Portability and Accountability Act of 1996 as codified at 42 U.S.C. § 1320d through d-8 ("HIPAA"), and the requirements of any regulations promulgated thereunder including, without limitation, the federal privacy regulation as contained in 45 C.F.R. part 164 (the "Federal Privacy Regulations"), the federal security standards as contained in 45 C.F.R. Part 142 (the



“Federal Security Regulation”), and Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”). Both parties agree not to use or further disclose any protected health information, as defined in 45 CFR 164.504, or individually identifiable health information, as defined in 42 U.S.C. § 1320d (collectively the “Protected Health Information”), concerning a patient other than as permitted by this Agreement and the requirements of HIPAA or regulations promulgated under HIPAA including, without limitation, the Federal Privacy Regulations, the Federal Security Regulations, and HITECH.

**4.4 Insurance.** Laboratory shall maintain professional liability and commercial liability insurance in such amounts as are customary in the industry as provided in Exhibit A.

## 5. MISCELLANEOUS

- 5.1. Change in Law.** The terms of this Agreement are intended to be in compliance with applicable law as of the Effective Date. Should legal counsel for either party reasonably conclude that any portion of this Agreement is or may be in violation of applicable law, or subsequent enactments of applicable law, or if any such change or proposed change would materially alter the amount or method of compensating Laboratory for COVID-19 Test performed for Client, or would materially increase the cost of Laboratory’s performance hereunder, this Agreement shall terminate by giving the other party thirty (30) days advance written notice thereof, unless within said thirty (30) day period the parties agree to such modifications of this Agreement as may be necessary to establish compliance.
- 5.2. Publicity.** Either party may issue a press release or other public communication regarding the general nature of this Agreement, provided that the pricing terms of this Agreement shall not be released by Client to any third party unless required by applicable law or authorized in writing by Laboratory.
- 5.3. Non-Assignability.** This Agreement may not be assigned, delegated, or transferred by either party without the written consent of the other party which shall not be unreasonably withheld or delayed; any unauthorized assignment, delegation or transfer shall be void.
- 5.4. Notice.** Any notice required hereunder will be deemed to have been properly provided if mailed with automated delivery confirmation by either FedEx, UPS or U.S. Postal Service, and properly addressed to the parties hereto at the following addresses. Notice will be deemed given on the delivery date set forth in the automated delivery confirmation details.

To Laboratory:                    Bio-Reference Laboratories, Inc.  
481 Edward H. Ross Dr.  
Elmwood Park, NJ 07407  
Attention: Legal Department

To Client:                        Natividad Hospital  
1441 Constitution Blvd.  
Salinas, CA 93906  
Attention: \_\_\_\_\_

- 5.5. Independent Relationship.** None of the provisions of this Agreement are intended to create, nor shall be deemed or construed to create, any relationship between Client and Laboratory other than that of independent entities contracting solely for the purposes set forth herein. Neither party shall be construed to be the agent, employer or representative of the other party.
- 5.6. Force Majeure.** Neither party shall be liable for any claims or damages resulting or arising out of a failure or delay that is due to a force majeure event beyond the control of such party.
- 5.7. Benefit.** This Agreement is intended to inure only to the benefit of Laboratory and Client, and is not intended to create, nor shall be deemed or construed to create, any right in any third-party.
- 5.8. Non-Discrimination.** All services provided by Laboratory hereunder shall be in compliance with applicable law prohibiting discrimination on any basis.



- 5.9. **Headings.** The headings herein are for convenience only, and are not intended to, and shall not, define or limit the scope of the provisions to which they relate.
- 5.10. **Severance Clause.** The invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall in no way affect the validity or enforceability of any other provision in that jurisdiction, or of the entire Agreement in any other jurisdiction.
- 5.11. **Choice of Law.** The laws of the State of California shall govern the terms of this Agreement.
- 5.12. **Integration.** This Agreement is intended by the parties as a final expression of their contractual agreement and as a complete statement of the terms thereof, and shall supersede all previous understandings and agreements, whether written or oral.
- 5.13. **Waiver.** No course of dealing between Client and Laboratory, and/or any delay by a party in exercising its respective rights under this Agreement, shall operate as a waiver of any of the rights of such party hereunder, and no express waiver shall affect any condition, covenant, rule or regulation other than the one specified in such waiver and only for the time and in the manner specifically the stated in such waiver.
- 5.14. **Modification.** Except as expressly set forth herein, this Agreement may not be modified except in a writing duly executed by the parties.

IN WITNESS HEREOF, the parties have caused this Agreement to be executed in their names as their official acts by their respective representatives, each of whom is duly authorized to execute the same.

**BIO-REFERENCE LABORATORIES, INC.**

By: Cindy Jacke

Print: Cindy Jacke

Title: SVP of Sales

Date: 5/8/2020

Fed ID: 22-2405059

**NATIVIDAD HOSPITAL**

By: [Signature]

Print: Gary R Coey

Title: CEO

Date: 5/8/2020

Fed ID: \_\_\_\_\_

