LABORATORY SERVICES AGREEMENT FOR COVID 19 RT-PCR AND SEROLOGY ANTIBODY TESTING

This Laboratory Services Agreement ("Agreement"), made as of the date of the last signature below ("Effective Date"), is by and between **SHAKER PLACE REHABILITATION AND NURSING CENTER** ("Client") and **BIO-REFERENCE LABORATORIES, INC.** ("Laboratory"). This Agreement is applicable solely to the provision of the COVID-19 testing described below, and replaces any previous COVID-19 laboratory services agreement between the parties. To the extent that Client and Laboratory have executed a separate laboratory services agreement for non-COVID-19 related testing, such agreement remains in full force and effect for the non-COVID-19 related testing, and the terms of this Agreement shall control for the COVID-19-related testing.

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 performs RT-PCR testing (the "RT-PCR Test) for detection of the SARS-CoV-2 virus ("COVID-19") as well as serology antibody testing (the "Serology Antibody Test") for the detection of antibodies to the COVID-19 virus.

WHEREAS, Client desires to contract with Laboratory to provide RT-PCR Tests and Serology Antibody Tests (collectively, the "COVID-19 Tests") for individuals designated by Client ("Tested Persons") and Laboratory desires to provide such COVID-19 Tests.

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 Tests. Laboratory agrees to perform, upon request by Client and to the extent within its capabilities, COVID-19 Tests for Tested Persons. 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. COVID-19 Test Orders. 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 in which the Tested Person resides (an "Authorized Provider") as well as all patient billing demographic information if Client wishes the testing to be billed to the patient's insurance company or other third party payer. Client shall be responsible for ensuring that all orders for COVID Tests shall be made by an Authorized Provider.

1.3. Specimen Collection. Laboratory and Client agree that the RT-PCR Test can only be performed on swab specimens approved by the FDA. Client shall be responsible for performing or arranging for the collection of specimens that will be sent to Laboratory for COVID-19 Tests, including the provision of all collection supplies. In the event Laboratory provides any collection supplies to Client, Client agrees that such supplies shall be used solely to collect specimens that will be sent by Client to Laboratory, or such supplies shall be returned promptly to Laboratory. Client shall be responsible for the delivery of such specimens to Laboratory's laboratory testing location. Client agrees that Laboratory shall not be responsible for inadequate specimen collection, mislabeling of specimens, or other collection-related errors.

1.4. **Consents & Authorizations.** Client shall obtain all consents and authorizations from Tested Persons as may be required by applicable law to enable Laboratory to perform COVID-19 Tests 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 COVID-19 Test results to Authorized Providers and Tested Persons, and Laboratory shall have no responsibility for the delivery of COVID-19 Test results to Authorized Providers and Tested Persons.

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/) to discuss Laboratory's procedures and to provide the status of COVID-19 Test results.

1.7. **Utilization of Test Results.** Client acknowledges that:

(a) A negative result from the Serology Antibody Test does not rule out COVID-19 infection, particularly if the Tested Person been in contact with the COVID-19 virus,

(b) A positive result from the Serology Antibody Test may be due to past or present infection with a different strain of coronavirus, such as coronavirus HKU1, NL63, OC43 or 229E, and may not indicate past or present infection with the COVID-19 virus.

(c) Results from the Serology Antibody Test should not be used as the sole basis to diagnose or exclude COVID-19 infection, to inform infection status, or to make determinations with respect to returning to work or other public exposure, and Laboratory shall have no responsibility or liability for any such decisions or determinations. Client agrees to indemnify and hold Laboratory harmless against any claims, liability, actions or damages arising from or related to decisions or determinations made by Client, Authorized Persons, Tested Patients or any third party based upon the results of the Serology Antibody Tests.

2. **TERM AND TERMINATION.** This Agreement shall commence on the Effective Date. This Agreement shall have an initial term of one (1) year (the "Initial Term"). The term of this Agreement shall renew for additional terms of one (1) year each unless terminated as provided in this Section or by the written agreement of the parties. This Agreement may be terminated by either party at any time, with or without cause, by giving the other party fifteen (15) days prior written notice. In addition, in the event of a material breach of this Agreement, the non-breaching party may terminate this Agreement by providing five (5) days prior written notice of termination to the breaching party.

3. **FEES, INVOICING AND PAYMENTS**

3.1. **Hybrid Billing.** Laboratory shall bill for COVID-19 Tests performed pursuant to this Agreement in one of two manners as set forth in Section 3.2 and Section 3.3 below.

3.2. **Billing the Patient or Patient's Third-Party Payer.** For those patients who do not fall under Section 3.3, Laboratory shall bill and collect from the patient or the patient's third-party payer. Client shall provide Laboratory with all patient information necessary for Laboratory to bill the patient or the patient's third-party payer. In the event Client does not provide this information to Laboratory with the specimen, or if the patient or the patient's third party payer does not reimburse Laboratory for the COVID-19 Test, Laboratory shall bill Client and Client shall pay Laboratory for such COVID-19 Tests pursuant to Section 3.3 and Section 3.4.

3.3. **Fees.** For Medicare Part A patients, and for patients who are covered under an "all inclusive" managed care insurance plan, Laboratory shall charge Client, Eighty Dollars ($80) for each specimen submitted for RT-PCR Tests and Fifty Dollars ($50) for each specimen submitted for Serology Antibody Tests.

3.4. **Invoicing and Payment.** Laboratory shall submit a detailed written invoice to Client in connection with COVID-19 Tests rendered under Section 3.3. Within ten (10) days of receipt, Client shall submit payment to Laboratory for the undisputed amount of each invoice.

3.5. **Disputing a Charge.** If Client does not submit written notice of a dispute of an invoiced charge within forty-five (45) days of receipt, then the dispute shall be waived. Such written notice shall be submitted directly to the following address: BioReference Laboratories, Inc., Attn: Billing Department, 481 Edward H. Ross Drive, Elmwood Park, New Jersey 07407.

3.6. **Late Payments.** If Client does not pay the undisputed amount of each invoice within ten (10) days of receipt, then Laboratory shall have the right to immediately stop providing services, and terminate this Agreement upon ten (10) days advance written notice.

3.7. **Billing by Client**. If Client bills or collects fees from Tested Persons, customers or others for the services performed by Laboratory hereunder, then such billing and collection activities shall be performed in accordance with applicable federal and state law, including, but not limited to, laws relating to direct billing, anti-markup, and disclosures. Client acknowledges that federal and state laws, including the Families First Coronavirus Response Act and Coronavirus Aid, Relief and Economic Security Act, place substantial restrictions on amounts that may be billed for COVID-19 Tests.

3.8. **Pricing is Confidential**. The parties agree that all information and matters regarding pricing represent the confidential information of Laboratory ("Confidential Information"). Client shall maintain the confidentiality of all such Confidential Information and shall not divulge such information to any third-party, except as required by applicable law.

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.

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: Shaker Rehabilitation and Nursing Center
100 Heritage Lane
Albany, NY 12211
Attention: Legal Department

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 New Jersey 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.

6. Ineligibility

6.1 Each party represents and warrants that neither it nor any of its directors, officers, employees, agents or subcontractors are "Ineligible Persons," which is defined as any individual or entity who: (i) is currently

excluded, debarred, or otherwise ineligible to participate in any State or Federal health care program, including those set forth in 42 USC §1320a-7b(f) (collectively, the "Health Care Programs"); (ii) has been convicted of a criminal offense related to the provision of health services or health care items, but has not yet been excluded, debarred or otherwise declared ineligible to participate in any of the Health Care Programs. Each party shall immediately notify the other of any debarment or exclusion or other event that would make such party and/or any of its directors, officers, employees, agents or subcontractors Ineligible Persons. Any breach of this Section shall give the non-breaching party the right to terminate the Agreement immediately for cause.

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: Ellen Beausang

Print: Ellen Beausang

Title: GM & VP Oncology and Cancer Services

Date: 10/26/2020

Fed ID: 22-2405059

SHAKER REHABILITATION AND NURSING CENTER

By: [signature]

Print: DANIEL C. LYNCH

Title: DEPUTY COUNTY EXECUTIVE

Date: 10/22/2020

Fed ID: 146002563