

LABORATORY SERVICES AGREEMENT

THIS LABORATORY SERVICES AGREEMENT, made effective as of the [DAY] of [Month & Year] (the “**Effective Date**”), by and between **PHOENIX DIAGNOSTICS, LLC**, a Wyoming limited liability company with an address at 129 NW 13th Street Suit 23 Boca Raton, FL 33432 (hereinafter, referred to as “**Contractor**”) and [Organization name] (hereinafter, referred to as “**Facility**”). Each of Contractor and Facility is referred to herein as a “**Party**” and, collectively, as the “**Parties**”.

WHEREAS, Contractor operates a reference testing clinical laboratory facility licensed pursuant to state and federal law, and is certified as a Medicare and Medicaid provider; and

WHEREAS, Facility operates a skilled nursing facility licensed by the State of _____ and located at:

_____ (“**Facility’s Location**”); and

WHEREAS, Facility desires to arrange with Contractor to provide reference testing clinical laboratory services ordered by a physician for Facility’s patients, and Contractor desires to provide the services described herein, in accordance with the terms of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. ENGAGEMENT.

(a) **Statement of Engagement.** Facility hereby engages Contractor for the provision of laboratory services as set forth herein, and Contractor hereby accepts such engagement under the terms and conditions set forth in this Agreement.

(b) **Relationship of the Parties.** The relationship of Contractor and Facility is that of independent contracting parties. In this regard, unless otherwise expressly provided for in this Agreement, nothing in this Agreement constitutes or should be construed to be or to create a principal-agent, master-servant, or employer-employee relationship between Contractor and Facility. Facility is not in any way responsible for any federal, state, or local income tax or withholdings, employer taxes, workers compensation or any employee benefits of any kind or nature on behalf of Contractor or its staff.

2. TERM AND TERMINATION. The term of this Agreement (the “**Term**”) shall commence on the Effective Date and continue for an initial period of one (1) year (the “**Initial Term**”) and shall automatically renew for subsequent one-year periods (each, a “**Renewal Term**”), upon the same terms and conditions set forth herein, unless a Party gives the other Party written notice of its election not to renew this Agreement at least

thirty (30) days before the end of the Initial Term or the then current Renewal Term. Each Term is subject to termination in accordance with the provisions of Section 8 of this Agreement.

3. **NON-EXCLUSIVITY**. Nothing contained in this Agreement shall prevent any Party hereto from participating in or contracting with any other skilled nursing facility, health care organization, or any insurance program or shall be deemed to limit or interfere with resident freedom of choice.

4. **CONTRACTOR QUALIFICATIONS, DUTIES AND REPRESENTATIONS.**

(a) **Duties.**

(i) Contractor agrees to perform lab testing services for Facility when requested by Facility, if available, during the term of this Agreement. The services shall include those tests listed on Exhibit A hereto, as the same may be modified from time to time by Contractor and such additional services as the Parties may agree to in writing. The service area under this Agreement shall be the State of _____.

(ii) Contractor shall provide laboratory blood, urine and other body fluid and excrement specimen testing for patients of Facility, in accordance with physician orders sent (by facsimile or other written method) to Contractor by Facility or a Facility patient's physician.

(iii) Contractor shall cooperate with Facility to develop protocols for the timeliness of performing and reporting laboratory services and results, including STAT orders, and such protocols shall be binding upon Contractor. In accordance with such protocols, Contractor shall send laboratory results to Facility via facsimile or other method agreed to by the Parties, in such time frames as required by the above-referenced protocols.

(iv) Contractor shall complete and retain any and all documentation as required under applicable federal and state law or applicable accrediting organization standards.

(v) Contractor shall ensure that all of its staff members providing services under this Agreement wear identification badges identifying their names, titles or other credentials, and affiliation with Contractor.

(vi) Contractor shall abide by the policies and procedures of Facility as applicable to the provision of services under this Agreement, including but not limited to all required training, and which are provided to Contractor in writing.

(vii) Contractor shall establish a regular system of measurement to ensure compliance with the standards set forth in the industry, as well as applicable federal, state and local laws, rules, regulations and standards, and the standards of applicable accrediting agencies or organizations. Contractor shall cooperate with Facility's quality assurance measures and programs as reasonably requested by Facility, and agrees to cooperate with Facility in

Facility's Quality Assessment activities.

(ix) Upon execution hereof, and annually thereafter, upon Facility's reasonable request, Contractor shall provide the following documentation to Facility:

(A) Contractor's corporate organization, licensure and accreditation certificates (including but not limited to proof of CLIA certification); and

(B) Copies of all insurance certificates for professional liability and any and all other insurances required hereunder or pursuant to applicable federal, state and local laws, rules, regulations and industry standards.

(b) Contractor's Representations. Contractor represents and warrants that it is a State of _____ licensed and CLIA-certified laboratory. Contractor further represents and warrants that its staff members providing services under this Agreement are appropriately educated, licensed, certified and trained in compliance with applicable federal and state laws, rules and regulations and applicable accrediting standards.

5. FACILITY DUTIES AND REPRESENTATIONS.

(a) Patient Services. All patients are accepted for care by and are deemed to be patients of Facility. Services are furnished in accordance with each patient's plan of care. Facility shall retain exclusive authority to admit and discharge patients at the Facility Location.

(b) Admission Records. Facility shall provide to Contractor a copy of the admission record for each patient prior to requesting that Contractor provide any testing services with respect to such patient

(c) Physician Orders. Facility shall provide to Contractor a physician order for all specimens to be tested by or conducted by Contractor.

(d) Documentation. Facility shall ensure appropriate documentation in patient medical records, in accordance with applicable federal and state laws and regulations. Facility shall be responsible to maintain all Facility medical records in such manner and for such length of time as required under applicable federal and state laws, rules, regulations and standards.

(e) Facility Licensure. Facility represents that Facility's Location (and any other facility operated by Facility with respect to which Contractor may provide services) is and shall remain, for at least the Term of this Agreement, a duly licensed skilled nursing facility under applicable federal, state, and local law. Facility agrees to maintain compliance with all other required federal and state licensing, certification and accreditation requirements with respect to said facility.

6. **BILLING AND COLLECTION FOR LABORATORY SERVICES; REMUNERATION.**

(a) Medicare Part A Services. For all services performed by Contractor for patients covered by Medicare Part A, or if Facility is required by law, regulation or otherwise to bill for any of the testing and/or other services performed by Contractor under this Agreement, or if Facility is reimbursed by a third party for testing performed under this Agreement through a composite, per diem, or prospective payment rate (PPS), consolidated billing, all-inclusive managed care contract or otherwise, and in any other situation where Facility is responsible for payment, Contractor will invoice and Facility agrees to pay for all of Contractor's testing and other services provided under this Agreement, in the manner and in the amounts set forth in the then current Fee Schedule, which is annexed hereto as Exhibit A, or as otherwise provided in this Agreement. All fees are due within ninety (90) days from the date of invoice, unless otherwise indicated on the applicable invoice. In the event of late payment or failure to pay, Facility's account may be placed on "credit hold" status.

(b) Third party/patient billing: For Testing Services not covered by Medicare Part A as identified in Section 6(a) above, Contractor agrees to bill the patient or other responsible party, including Medicare Part B, Medicaid and third-party insurance payors, for the Testing Services performed by Contractor under this Agreement. Facility agrees to promptly provide to Contractor, but in no case later than thirty (30) days after Contractor furnishes any service under this Agreement to a patient, with all necessary medical, demographic, and billing information, and all other necessary information, as may be requested by Contractor, to bill and collect amounts due for such services. For Testing Services not covered by commercial insurances ("claim denied"), Facility agrees to pay for all of Contractor's testing and other services provided under this Agreement, in the manner and in the amounts set forth in the current Fee Schedule, which is annexed hereto as Exhibit A, or as otherwise provided in this Agreement. Unless otherwise stated in writing by the Facility, the Contractor shall bill the patient directly, according to the amounts set forth in the then current Fee Schedule, which is annexed hereto as Exhibit A, or as otherwise provided in this Agreement.

(c) Compliance with Laws. All billing and collection performed by Facility or Contractor shall be performed in accordance with all applicable federal and state laws, rules and regulations and payor requirements.

(d) No Other Remuneration and Fair Market Value Determination. The Parties agree that no other monetary remuneration will be exchanged between them for the provision of Testing Services under this Agreement. Contractor represents and warrants that the pricing agreed to between Facility and Contractor has been determined based upon fair market value and has not been determined on the basis of "swapping" (i.e., a discount on goods and services for use by Medicare Part A patients to induce the exclusive right to provide goods or services to all other patients in the Facility for which a third-party payor pays (e.g.; the government or other insurer)). "Swapping" includes, but is not limited to, pricing below Contractor's actual cost; "prompt payment" discounts and other payment terms exceeding

industry standards; and pricing substantially below what Contractor charges the government and/or other clients, other than reasonable discounts that reflect Facility's administrative costs for billing and Contractor's lack of risk for bad debt. Contractor shall substantiate on a periodic basis, but not less than every three months, that pricing agreed to between Facility and Contractor does not constitute "swapping" and agrees to use an objective standard (e.g.; "true-up" reconciliation or some other means) agreed upon by both Facility and Contractor. Contractor shall provide written evidence of such "true-up" to support any and all such reconciliations throughout the term of this Agreement.

(e) Audit. At Contractor's request, Facility shall permit Contractor and its representatives to review and audit information being sent by Facility to its Fiscal Intermediary (at Medicare/Medicaid) to insure proper and accurate billing practices.

(f) Access to Books and Records. If the services to be provided by Contractor hereunder are subject to the disclosure requirements of 42 U.S.C. § 1395x(v)(1)(I) and 42 C.F.R. § 420.302, or their successor provisions (the "**Medicare Access Requirements**"), Contractor agrees to make available for seven (7) years after the termination of this Agreement to the Secretary of Health and Human Services or the Comptroller General of the United States, or their duly authorized representatives, upon request, any contracts, books, documents or records necessary to verify the nature and extent of the cost of services furnished to Facility and/or its patients under this Agreement. Access under this provision shall apply to those contracts, books, documents or records that are within the scope of and are legally requested under the authority of the Medicare Access Requirements. Such access shall be available for such time period as may be required under the Medicare Access Requirements. Furthermore, in accordance with the Medicare Access Requirements, if Contractor carries out any of its duties under this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period, such subcontract shall contain a similar clause regarding government access to any contracts, books, documents or records necessary to verify the nature and extent of the cost of the items or services furnished under such subcontract.

7. **MEDICAL NECESSITY ACKNOWLEDGMENT.** Facility hereby acknowledges that it must provide Contractor with each patient's appropriate diagnosis code (ICD10) for the Testing Services provided hereunder. Facility further acknowledges and agrees that if a patient's diagnosis code changes, Facility shall promptly inform Contractor of any such changes. Facility shall be responsible to insure that all necessary and appropriate physician orders are obtained and remain in effect at the time each test is ordered and, if such test is performed pursuant to a recurring order, at the time each scheduled test is performed by Contractor. Facility hereby acknowledges and agrees that providers such as Contractor are not in a position to make a determination as to the medical necessity for any tests ordered for a patient.

8. **TERMINATION.** This Agreement may be terminated in the following ways:

(a) By Either Party. By either Party upon thirty (30) days' advance written notice to the other Party, at any time with or without cause stated.

(b) Failure to Perform; Just Cause. If either Party shall fail to perform any of the duties, obligations or responsibilities to be performed by it pursuant to this Agreement and such default shall continue and not be resolved to the reasonable satisfaction of the other Party for a period of ninety (90) days after written notice describing the claimed default has been given by the other Party, the Party serving such notice may terminate this Agreement immediately upon written notice. Such rights of termination shall be in addition to and without limitation upon the other rights of the Party serving the notice of termination.

(c) Bankruptcy. By either Party immediately upon the filing by the other of a petition in voluntary bankruptcy or an assignment for the benefit of creditors by the other Party, or upon other action taken or suffered, voluntarily or involuntarily, under any federal or state law for the benefit of insolvents by or against the other Party, except for the filing of a petition in involuntary bankruptcy against either Party which is dismissed within thirty (30) days thereafter.

(d) Unenforceable. By either Party, if this Agreement or its performance becomes or is held unenforceable or illegal, in total or with respect to any material portion hereof, by (i) a court of competent jurisdiction or administrative agency having authority to regulate either of the Parties, or (ii) any law, rule, ordinance or regulation hereafter enacted by any federal, state or local government (or agency or instrumentality thereof) or administration or licensing authority possessing regulatory or licensing authority over the medical services or health care professionals involved hereunder. However, in such event, the Parties agree to renegotiate in good faith for a period of thirty (30) days in an effort to restore the Agreement to a form which will eliminate the illegal or unenforceable aspects thereof, while remaining consistent with the intent and purpose of this Agreement in its original form.

9. CONFIDENTIALITY. Both Parties acknowledge that each will be provided and have access to information of a highly sensitive, confidential and proprietary nature regarding the other's business, including patient records and information and other business records of the other ("Confidential Information"). Disclosure of either Party's Confidential Information would harm the patients and the business of the other, and would provide competitors with an unfair competitive advantage over the other. Therefore, each Party covenants and agrees that it shall not itself, nor authorize others to do so on its behalf, publish, disclose, use or copy any such Confidential Information except as required by the terms of this Agreement, for third-party billing or by law. Each Party agrees to maintain adequate safeguards to prevent use or disclosure of Confidential Information by any employee, subcontractor or agent, in violation of this Agreement or in violation of applicable federal (including, but not limited to, the requirements of HIPAA) or state law, rule or regulation.

Any Confidential Information of a Party shall remain confidential and the sole property of the Party owning such record during the term of this Agreement. Upon termination of this Agreement for any reason, each Party will return all Confidential Information owned by the other within thirty (30) days of the date of termination. However, before or after termination, each Party shall have reasonable access to copies of all such records as necessary for compliance

with any law, regulation, malpractice defense, insurance audits or similar reasons.

The confidentiality provisions set forth in this section shall survive the termination or expiration of this Agreement for any reason for a period of one (1) year.

10. INSURANCE. Each Party shall maintain insurance coverage, in such minimum amounts as required by applicable law, but not less than one million dollars (\$500,000.00) per occurrence and three million dollars (\$1,500,000.00) in the aggregate. In the event such coverage is provided under a “claims made” policy, such coverage shall remain in effect (or the covered Party shall procure equivalent “tail coverage”) for a period of not less than five (5) years following termination of this Agreement. Contractor shall maintain workers’ compensation insurance for all of Contractor’s staff in amounts required by the laws of the state in which Facility is located, although Contractor may elect to self-insure for workers compensation insurance, pursuant to applicable law. Contractor shall deliver to Center thirty (30) days prior written notice of any expiration or cancellation of such policies, and, upon request, Contractor shall provide written proof of coverage to Facility.

11. INDEMNIFICATION. Neither Party shall be liable under any contracts or obligations of the other Party, except as otherwise provided pursuant to this Agreement, or for any act or omission of the other Party or such Party’s officers, employees, independent contractors or agents. Each Party agrees to indemnify and hold harmless the other Party from any and all losses, damages, costs and expenses (including reasonable attorney fees and costs) that are caused by or arise out of any act, omission, fault, negligence or misconduct by the other Party, its officers, employees, independent contractors and agents in connection with this Agreement. The provisions of this section shall survive termination or expiration of this Agreement.

12. MISCELLANEOUS.

(a) Entire Agreement. This Agreement contains the entire agreement of the parties and voids any currently existing agreements of the Parties, both oral and written.

(b) Amendments. This Agreement may be amended at any time by mutual agreement of the Parties, provided that before any amendment shall be operative or valid, it shall be reduced to writing and signed by the Parties hereto.

(c) Construction; Governing Law. This Agreement shall be interpreted in accordance with, and the rights of the Parties hereto shall be determined by, the laws of the State of Florida. The Courts of the State of Florida or the Federal Courts of the Southern District of Florida as appropriate shall have sole jurisdiction over any controversy between the parties whether arising hereunder or otherwise.

(d) Benefit. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(e) Assignment. Except as otherwise provided herein, this Agreement may not be assigned by any Party without the prior written consent of the other Party.

(f) Waiver. The failure of a Party hereto to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that Party of the right thereafter to that term or any other term of this Agreement.

(g) Severability. If any provision of this Agreement shall be declared invalid or illegal for any reason whatsoever, then notwithstanding such invalidity or illegality, the remaining terms and provisions of the within Agreement shall remain in full force and effect in the same manner as if the invalid or illegal provisions had not been contained herein.

(h) Headings. The paragraph headings in this Agreement are solely for convenience or reference and shall not affect its interpretation.

(i) Notice. Whenever, under the provisions of this Agreement, notice is required to be given, it shall be in writing and shall be deemed given when delivered by nationally recognized overnight delivery service, addressed to the parties at the addresses set forth above or sent by emailed to Contractor at [REDACTED].

(j) Enforcement. In the event any Party to this Agreement resorts to legal action to enforce the terms and provisions of this Agreement, the prevailing Party shall be entitled to recover from the other Party the reasonable cost of such action so incurred, including, without limitation, reasonable attorney fees and disbursements.

(k) Change in Law or Regulation. The terms of this Agreement are intended to be in compliance with all federal, state and local statutes, regulations and ordinances applicable on the date the Agreement takes effect including but not limited to, the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (“HIPAA”), the Deficit Reduction Act of 2005, and the federal and applicable state False Claims Acts. The Parties agree to execute amendments as may be necessary for the continuing compliance with the aforementioned laws and regulations, and as additional laws and regulations are promulgated or become final and effective. Should either Party reasonably conclude that any portion of this Agreement is or may be in violation of such requirements or subsequent enactments by federal, state or local authorities, or if any such change or proposed change would materially alter the amount or method of compensating Contractor for services performed for Facility under this Agreement, or would materially increase the cost of Contractor’s performance hereunder, the Parties agree to negotiate written modifications to this Agreement as may be necessary to establish compliance with such authorities or to reflect applicable changes.

(l) Warranty.

(i) FACILITY WARRANTS TO CONTRACTOR THAT FACILITY HAS NOT BEEN DEBARRED, SUSPENDED, DECLARED INELIGIBLE OR EXCLUDED FROM MEDICARE, MEDICAID, OR ANY OTHER FEDERAL OR STATE GOVERNMENT HEALTHCARE PROGRAM.

(ii) CONTRACTOR WARRANTS TO FACILITY THAT NEITHER CONTRACTOR NOR ANY OF ITS EMPLOYEES OR OWNERS HAVE BEEN DEBARRED, SUSPENDED, DECLARED INELIGIBLE OR EXCLUDED FROM MEDICARE, MEDICAID OR ANY OTHER FEDERAL OR STATE GOVERNMENT HEALTHCARE PROGRAM.

(iii) CONTRACTOR WARRANTS TO FACILITY THAT ALL

SERVICES PROVIDED HEREUNDER SHALL BE IN ACCORDANCE WITH ESTABLISHED AND RECOGNIZED CLINICAL LABORATORY TESTING PROCEDURES AND WITH REASONABLE CARE IN ACCORDANCE WITH APPLICABLE FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS.

(iv) Each of the Parties represents and warrants to the other Party, with respect to all Protected Health Information (as that term is defined under the HIPAA privacy regulations, as amended from time to time), that it is a Covered Entity and not a Business Associate of the other Party under the HIPAA privacy regulations and that it shall protect the privacy, integrity, security, confidentiality and availability of the Protected Health Information disclosed to, used by, or exchanged by the parties by implementing appropriate privacy and security policies, procedures, and practices and physical and technological safeguards and security mechanisms, all as required by, and as set forth more specifically in, the HIPAA privacy regulations and the HIPAA security regulations.

(v) Contractor may utilize any samples received from Facility for the purposes of testing equipment and research and development.

(m) Interpretation. It is specifically understood and agreed by and between the Parties that this Agreement is the result of negotiations between the Parties. Accordingly, it is understood and agreed that each Party shall be deemed to have drafted these documents and there shall be no negative inference from the language of this Agreement by any fact-finder as against any Party.

(n) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A counterpart signed and sent by facsimile transmission or by electronic mail in portable document format (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

(o) Acknowledgement of Compliance Program.

(i) Acknowledgement of Compliance Program. Contractor acknowledges that Facility has established a Compliance Program which includes, but is not limited to, a Code of Conduct, which includes materials regarding Facility's program for preventing Medicare and Medicaid fraud and abuse, and that Facility has made available to Contractor its Code of Conduct at the Facility's web site, located at: [REDACTED]. Facility will update the Compliance Program on the web site from time to time to reflect regulatory requirements.

(ii) Program Representations. Each Party hereby represents, warrants and covenants to the other that as of the date of this Agreement, and for the entire term and any renewal hereof, with respect to any federal health care program as defined in

section 1128B of the Social Security Act (42 U.S.C. 1320a-7b(f)) or any State health care program as defined in section 1128B of the Social Security Act (42 U.S.C. 1320a-7b(h)) (collectively, the “Programs”): neither (a) the representing Party; (b) any individual with a direct or indirect ownership or control interest of five percent (5%) or more of the representing Party; nor (c) any director, officer, agent or employee of the representing Party; has ever been debarred, suspended or excluded from any Program. Each Party covenants to immediately notify the other in writing if this representation is no longer true.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Laboratory Services Agreement to be executed this _____ day of _____, 2024.

CONTRACTOR:

Phoenix DIAGNOSTICS, LLC

By: _____
Name: _____
Title: _____

FACILITY:

By: _____
Name: _____
Title: _____

EXHIBIT A

Available Testing Services and Fee Schedule [Note representation re: pricing in Sec. 6(d).]

TEST NAME	PRICE
C-DIFF (or other GI single targets)	\$35
COVID-19	\$75
FECAL OCCULT BLOOD	\$10
GPP (FULL STOOL PANEL)	\$80
GROUP A STREP	\$25
RESPIRATORY PATHOGEN PANEL	\$75
URINE CHEMISTRY (MICROALBUMIN/CREATININE)	\$15
URINALYSIS	\$10
UTI PANEL	\$75
WOUND PANEL	\$75
LOWER RESPIRATORY PANEL	\$90