

**THIS LABORATORY SERVICE AGREEMENT**, effective on February 11, 2021 (the “Effective Date”), is by and between DIACARTA located at 2600 Hilltop Avenue, Richmond, CA 94806 (hereafter referred to as “**DIACARTA**”), and Alvord Unified School District, with principal place of business located at 9 KPC Parkway, Corona, CA 92879 (hereafter referred to as “**Client**”).

## **RECITALS**

Whereas, DIACARTA is a CLIA certified laboratory authorized to provide diagnostic tests at the specific request of a physician or qualified medical professional using patients’ samples including nasopharyngeal swabs, oropharyngeal swabs, sputum blood, saliva, buccal cells etc.

Whereas, Client is an organization that provides education or a learning institution that would like its employees and students to be tested for COVID-19 to maintain a safe work and learning environment.

Whereas, DIACARTA and Client agree to enter a business engagement as follows:

### **1. SERVICES**

- 1.1 DIACARTA agrees to provide laboratory diagnostic testing services to Client on a non-exclusive basis. DIACARTA will perform the laboratory testing services ordered in accordance with industry standards and all applicable laws, and in a manner consistent with that degree of care, skill and diligence as is ordinarily exercised by a professional laboratory testing contractor under similar conditions and circumstances.
- 1.2 DIACARTA will provide usual and customary supplies for the sole purpose of storing and transporting specimens to be tested by DIACARTA, including labels that may be used by Client to send specimens to DIACARTA.
- 1.3 Client agrees to have DIACARTA perform and provide testing results to Client according to the requested tests ordered by Client via fax, secure email, provide a platform for Client to electronically order test and receive reports, or to an EMR if necessary.
- 1.4 Client assumes professional and administrative responsibility for specimen collection and transporting specimen to DIACARTA, in compliance with all pertinent provisions of federal, state and local statutes, rules and regulations.
- 1.5 DIACARTA is only responsible for the technical component of the testing. DIACARTA is not responsible to obtain the medical necessity required for processing the sample. All such pre-analytical information needed for testing a sample has to be obtained by the Client prior to the sample being analyzed by DIACARTA.
- 1.6 DIACARTA represents and warrants that it complies with the licensing and certification requirements under the Clinical Laboratory Improvement Amendments of 1988, the Medicare and Medicaid programs, and any other applicable federal and state statutes and regulations. It is further agreed that upon request of Client, DIACARTA will provide verification of such licensure.

- 1.7 DIACARTA represents and warrants that it is responsible for the validity and quality of laboratory testing results. DIACARTA agrees to have the related laboratory and administrative documents ready and available to respond to questions and/or audits from Client and pertinent federal, state and local agencies.
- 1.8 Client shall own all right, title and interest in the data, results, and reports that DIACARTA provides to Client under this Agreement. DIACARTA agrees to share and report said data with federal, state and local authorities as required by applicable laws.
- 1.9 DIACARTA will use its best efforts to report test results within 24 – 48 hours from receipt of specimen in the lab; notwithstanding the foregoing delay can happen with increased volume or when DIACARTA needs to re-analyze specimens. Both parties agree this turnaround time is only an estimate and may change and that no liability will be attached due to such delay.

## **2. FINANCIALS**

- 2.1 DIACARTA will invoice Client, Patients, Medicare, Medi-Cal (as set forth below), or other third party payers (hereinafter collectively referred to as “third party payer(s)”) in accordance with the terms set forth below, and applicable federal and state statutes and regulations. Invoices to Client will be at the fees set forth in EXHIBIT A. Invoices to third party payers shall be at the fees set forth in DIACARTA’s standard laboratory fee schedule. In the event DIACARTA bills a third party payer, Client has the obligation to provide DIACARTA all billing information necessary to enable DIACARTA to bill and receive payment from all third party payers. Such information includes, without limitation, complete and accurate (1) patient demographic information, (2) insurance information, (3) diagnosis code(s) to the highest degree of specificity, (4) NPI numbers, and (5) other information as required by the third party payer. Client agrees to provide DIACARTA within thirty (30) days of date of service with complete and accurate information to bill and receive payment from any third-party payer. DIACARTA will bill Client for any Laboratory Testing Services for which Client does not submit any patient’s health insurance or payor information. Client agrees to pay DiaCarta at the fees set forth in EXHIBIT A for any denial of claims submitted to all third party payers.
- 2.2 **Payment Term:** For Services billed to Client, Client agrees to pay DiaCarta within thirty (30) days of the date of the Diacarta invoices for Laboratory Testing Services at the fees set forth on Attachment A, after which any unpaid invoice amounts shall be overdue. In the event that DiaCarta sends the account for collection and/or initiates litigation in order to collect overdue amounts, Client shall be liable for all costs and expenses of such collection and/or litigation, including reasonable attorney’s fees, court costs, and expenses. Any late payments will be subject to a 12% interest fee.
- 2.3 **Supply and Equipment:** Equipment provided by DIACARTA to Client free of charge must be used exclusively in conjunction with ordering and testing of laboratory services provided by DIACARTA.

**3. TERM AND TERMINATION**

- 3.1 This Agreement may be terminated by either party for any reason by giving thirty (30) days written notice.
- 3.2 If the business, terms and conditions associated with this Agreement violate any state or federal regulations or requirements including but not limited to Medicare, DIACARTA and Client agree to either change the Agreement to comply with the appropriate regulations or requirements or terminate this Agreement immediately.
- 3.3 Upon termination of this Agreement, neither party shall have any further obligation hereunder except for:
  - 3.3.1 Obligations incurred prior to the date of termination, such as payment for Laboratory Testing Services rendered prior to the termination of this Agreement.
  - 3.3.2 Obligations, promises or covenants contained herein that expressly survive the termination of this Agreement. Notwithstanding the above, the parties agree to use reasonable efforts to mitigate damage

**4. NON-SOLICITATION**

- 4.1 DIACARTA and Client hereby covenants that during the term of this Agreement and for a period of one (1) year after its termination, DIACARTA or Client shall not directly or indirectly, by or for himself or herself, or as the agent of another, or through others as agent, in any way solicit or induce, or attempt to solicit or induce, any customer, supplier, employee, officer, representative, consultant, or other agent of Client or DiaCarta or any of its affiliates, whether such person is presently employed or retained by Client or may hereinafter be so employed or retained, to leave Client or DiaCarta's or any of its affiliates' employ or otherwise interfere with the employment or independent contractor relationship between any such person and Client or any of its affiliates.
- 4.2 DIACARTA agrees that, for a period of one (1) year after termination of this Agreement, Diacarta will not, directly or indirectly, solicit or attempt to solicit diagnostic testing services business from anyone who was a customer or client of Client or its subsidiaries at any time during the twelve (12) month period immediately prior to the contract termination date.

**5. MISCELLANEOUS**

- 5.1 It is understood that DIACARTA and Client are independent contractors engaged in the operation of their own respective businesses.
- 5.2 All rights and obligations of either party under this Agreement may be assigned to its subsidiary, successor, or Parent Corporation.
- 5.3 This Agreement may only be modified in writing signed by both parties.

5.4 Any notice required to be given hereunder will be deemed to have been served properly, if mailed by certified or registered mail:

5.4.1 postage prepaid (or Federal Express or equivalent courier), properly addressed and posted in a United States depository to the respective parties hereto at the following address:

To Client: Alvord Unified School District

Name: Bob Presby, Ed.D.

Address: 9 KPC Parkway, Corona, CA 92879

Attn: Amanda Benitez

To DIACARTA:

Address: 2600 Hilltop Avenue, Richmond, CA 94806

Attn: Aiguo Zhang PhD, CEO

5.5 The individuals signing this Agreement represent that they have the authority to sign this Agreement on behalf of the respective parties.

5.6 Each party represents and warrants that it has not been convicted of a crime related to healthcare or is not currently listed by a federal agency as debarred, excluded or otherwise ineligible for participation in federally funded programs (including, without limitation, federally funded healthcare programs, such as Medicare and Medicaid).

5.7 Neither party hereto shall be liable for any loss or liability not caused by such party's own negligence or willful act or omission, or such party's failure to comply with its obligations hereunder, and each party hereto agrees to indemnify and hold harmless the other from and against any and all claims, expenses, losses, and obligations arising out of such party's negligent acts or omissions. The provision shall survive the termination or expiration of this Agreement.

## **6. COMPLIANCE WITH LAW**

Each of the parties represents and warrants to the other party that it will comply with all applicable laws, rules or regulations ("Applicable Laws"), including, but not limited to, the federal Physician Self-Referral Law, 42 U.S.C. 1395nn, and the regulations promulgated hereunder (together, the "Stark Law"), similar state physician self-referral laws and regulations (together with the Stark Law, the "Self-Referral Laws"), the federal Medicare/Medicaid Anti-kickback Law and regulations promulgated hereunder (the "Federal Anti-kickback Law"), and similar state Anti-kickback laws and regulations (together with the Federal Anti-kickback Law, the "Anti-kickback Laws") and the Health Insurance Portability and Accountability Act ("HIPPA"). This paragraph will survive the termination of this Agreement.

## **7. ARBITRATION - LITIGATION**

Both Client and DIACARTA agree that any controversy regarding, connected with, or arising from this Agreement shall be settled by informal, speedy and binding arbitration using a mutually agreeable certified arbitrator in a location that is mutually agreeable. The arbitration shall be conducted by a single neutral arbitrator who shall hold the arbitration hearing and make his or her award within 30 days of the conclusion of the

arbitration hearing. Each party to the arbitration shall bear its own counsel fees and other related expenses as well as its pro rata share of the expenses and fees of the arbitration service.

**8. SEVERABILITY**

In the event that any provision or any portion of any provision of this Agreement is adjudged, by a court of competent jurisdiction, to be invalid, illegal or unenforceable under any applicable law, such provision or portion thereof shall be deemed to be deleted from this Agreement and the validity of the remainder of this Agreement shall remain unaffected.

**9. COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which including **Exhibit A** together shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the parties have set their hands the date and year first above written.

By:

By:



Print Name: Aiguo Zhang

Print Name: Bob Presby, Ed.D.

Title: CEO

Title: Assistant Superintendent, HR

Date: Jan. 22, 2021

Date: 02/11/21



## LABORATORY SERVICES AGREEMENT

### EXHIBIT A

Pricing for processing the COVID 19 tests at DIACARTA are as follows;

**1. Test Name: CLIA Lab Service for Covid-19 Rt-PCR Test**

Catalog Number: DC-11-1001

Price: \$85 per sample/test

**2. Quantivirus Saliva Collection Kit**

Catalog Number: DC-11-1036

Price: \$5/ea