

LABORATORY SERVICES AGREEMENT

THIS **LABORATORY SERVICES AGREEMENT** (this “Agreement”) is made and entered into as of September 21, 2021, by and between **SOVEREIGN LABORATORY SERVICES LIMITED LIABILITY COMPANY**, a New Jersey limited liability company with a principal place of business located at 15-01 Broadway, Suite 31 Fair Lawn, NJ 07410 (“Company”), and **Village of Croton-on-Hudson**, a municipal corporation organized and existing under the laws of the State of New York located at 1 Van Wyck Street, Croton-on-Hudson, N.Y. 10520 (“Client”). Company and Client may hereinafter be referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Client is a municipal corporation organized and existing under the laws of the State of New York located at the above address; and

WHEREAS, Company is engaged in the business of providing laboratory testing services and laboratory testing training; and

WHEREAS, Client desires to engage Company, and Company desires to be engaged by Client, for the purpose of providing and/or arranging for the provision of Oropharyngeal and/or Sputum testing and related COVID-19 testing services and training (the “Services” as defined below) to Client’s elected and appointed officials, employees, volunteers, and other Client personnel as needed (“Client Personnel”), pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. PURPOSE.

1.1 **Purpose.** Client hereby engages Company, and Company hereby accepts engagement by Client, to provide and/or arrange for the provision of the laboratory and training services set forth in **Exhibit A**, in accordance with industry standards, applicable federal and state laws and third-party payor requirements, in exchange for the consideration set forth in **Exhibit A** (collectively, the “Fees”), and pursuant to the terms and conditions set forth in this Agreement.

1.2 **Incorporation.** The opening paragraph, recitals set forth above and all Exhibits attached hereto are hereby incorporated into this Agreement and form a part hereof.

2. TERM; TERMINATION.

2.1 **Term.** The term of this Agreement shall commence on September 28, 2021 (the “Commencement Date”) and shall continue through October 28, 2021 (the “Initial Term”), unless sooner terminated in accordance with the provisions of this Agreement.

2.2 Renewal. Immediately following the expiration of the Initial Term, the term of this Agreement shall not renew unless requested in writing by Client on or before October 28, 2021 (the “Renewal Term”). Any further renewal will require further agreement by the Parties. Either Party may provide the other with written notice of non-renewal at least thirty (30) days prior to the end of the applicable term, or unless sooner terminated in accordance with the provisions of this Agreement. The Initial Term and the Renewal Term may hereinafter be referred to collectively as the “Term.”

2.3 Termination Without Cause. Either Party may terminate this Agreement, without cause, by providing the other Party with at least thirty (14) days written notice.

2.4 Termination by Company for Cause. This Agreement may be terminated by Company upon the occurrence of any of the following events: (a) Client’s failure to pay its Fees within five (5) days of becoming due more than two (2) times during any twelve (12) month period; (b) Client’s breach of any term, representation, warranty, covenant or other condition of this Agreement (other than the payment of the Fees) if Client has not cured such breach to the reasonable satisfaction of Company within fifteen (15) days of Client’s receipt of written notice from Company stating in reasonable detail the nature of such breach; (c) the initiation of any insolvency proceedings, whether voluntary or involuntary, receivership or general assignment for the benefit of creditors of the assets of Client if such action is not dismissed within sixty (60) days after the filing or commencement of such action; or (d) the dissolution or liquidation of Client.

2.5 Termination by Client for Cause. This Agreement may be terminated by Client upon the occurrence of any of the following events: (a) Company’s breach of any term, representation, warranty, covenant or other condition of this Agreement if Company has not cured such breach to the reasonable satisfaction of Client within fifteen (15) days of Company’s receipt of written notice from Client stating in reasonable detail the nature of such breach; (b) the initiation of any insolvency proceedings, whether voluntary or involuntary, receivership or general assignment for the benefit of creditors of the assets of Company if such action is not dismissed within sixty (60) days after the filing or commencement of such action; or (c) the dissolution or liquidation of Company.

2.6 Termination or Modification for Legal or Regulatory Purposes. In the event (a) any federal, state or local law or regulation is enacted or issued, (b) a court of competent jurisdiction or another government authority or an accrediting body with jurisdiction over any Party hereto, or (c) any Party hereto receives an opinion of qualified legal counsel stating, in each case, that this Agreement or the obligations to be performed hereunder are illegal or unenforceable, in whole or in part, then the Parties agree to negotiate in good faith for a period of thirty (30) days to restructure this Agreement so as to eliminate the illegal or unenforceable or detrimental aspects while retaining the intent and purpose of this Agreement. If the Parties are unable to agree upon a restructuring of this Agreement within such thirty (30) day period, then either Party may terminate this Agreement (without prejudicing their rights described in this Agreement) upon providing at least ten (10) days prior written notice of termination to the other Party.

2.7 Effect of Termination. Upon termination, expiration or non-renewal of this Agreement: (a) neither Party shall be discharged from any previously accrued obligation which remains outstanding; (b) Client shall pay to Company all accrued, but unpaid, Fees for the Services rendered hereunder through the termination/expiration/non-renewal date that are unable to be paid by the insurance of Client Personnel; and (c) each Party shall return and deliver to the other Party or destroy all of the other Party’s Confidential Information (as defined below) in its possession; provided that

such Party may retain such information that it deems necessary or appropriate for its legal compliance or other business purposes.

3. DUTIES.

3.1 Company.

3.1.1 General Authority. Company shall provide or arrange for the provision of the Services to Client and Client Personnel.

3.1.2 Performance. Company shall perform the Services in a diligent and competent manner, and shall materially comply with all applicable statutes, codes, ordinances, regulations, rules, orders, directives and requirements of any governmental entity, authority, agency, bureau, board, office, commission and/or department or official thereof (“Applicable Law”) and third-party payor requirements in connection therewith. At all times during the Term, Company shall maintain all licenses, permits, registrations, and approvals necessary to provide the Services in accordance with Applicable Law.

3.1.3 Subcontractors. Client expressly acknowledges and agrees that Company may subcontract with third-parties for the performance of certain parts of the Services (“Subcontractors”). All fees charged by any Subcontractor shall remain the sole responsibility of Company.

3.1.4 Transportation of Samples. Company shall be solely responsible for transporting all physical COVID-19 test samples collected from Client Personnel at the Client to Company’s laboratory located at 15-01 Broadway, Suite 31 Fair Lawn, NJ 07410.

3.1.5 Billing. Company shall be solely responsible for billing Client Personnel individually, or their related third-party payers/insurers, for the Services provided hereunder. Company shall not seek payment from Client for the Services unless reasonable efforts by Company to collect its Fees from Client Personnel and his or her insurance have failed.

3.1.6 Training of Test Administrators. Company will provide on-site training (at the Client) on COVID-19 Sputum and/or Oropharyngeal test sample collection to the Test Administrator (as defined below) if necessary.

3.2 Client.

3.2.1 Licenses. At all times during the Term, Client shall maintain all licenses, permits, registrations and approvals necessary to operate the Client in accordance with Applicable Law.

3.2.2 Representations and Warranties. Client represents and warrants to Company as follows: (i) Client is a municipal corporation organized and existing under the laws of the State of New York; (ii) all of the information submitted to Company shall be true, accurate and complete, and contain no false or misleading information;; and (iii) Client is not a party to any enforceable contract with any other person, corporation or firm for services which are of the same or similar nature to the Services provided by Company under this Agreement.

3.2.3 Testing Space; Scheduling of Test Sample Collection. If necessary, Client shall provide Company with a sufficient amount of space at the Client to allow Company to provide those Services which are to be performed at the Client. Client shall be solely responsible for scheduling and coordinating all physical COVID-19 sample collection performed on Client Personnel at the Client.

3.2.4 Test Administrators; Testing Supplies. Client's nurse (the "Test Administrator") shall assist Company with the COVID-19 Sputum and/or Oropharyngeal test sample collection from Client Personnel at the Client. Client shall be solely responsible for compensating the Test Administrator. Company shall provide all equipment and supplies needed for the Test Administrator and Client Personnel, as appropriate, to perform all COVID-19 Oropharyngeal and/or Sputum / Oropharyngeal test sample collection on Client Personnel.

3.2.5 Assignment of Benefits, HIPAA Consents, Parental Consents, and Billing Information. Client shall provide Company with any and all required Client Personnel consents and billing information (via Company's billing portal, or as otherwise determined by Company) in connection with any Client Personnel providing samples to Company for laboratory testing, including without limitation: (i) an Assignment of Benefits ("AOB") form signed by the appropriate Client Personnel (; and (ii) a HIPAA Consent form furnished by Company (the "HIPAA Consent"), signed by the appropriate Client Personnel. Company shall provide Client with the blank AOB, HIPAA Consent, and Parental Consent forms necessary for Client to comply with this Section 3.2.5. Client shall be solely responsible for obtaining Parental Consent and HIPAA Consent.

4. FEES.

4.1 Payment Schedule. Company shall submit a monthly invoice to Client containing any Fees for Services provided to Client Personnel where reasonable efforts by Company to collect its Fees from Client Personnel, or their related third-party payers/insurers, have proved unsuccessful. The Fees shall be payable to Company within thirty (30) days of Client's receipt of Company's invoice.

4.2 Late Payments. If Client fails to pay the Fees for a given month within thirty (30) days of Client's receipt of the applicable invoice, then, in addition to all other remedies available to Company hereunder and under Applicable Law, such late payments shall accrue interest at the rate of one percent (1 %) per month accruing from the day that such payment was due. Additionally, Company shall have the right to suspend the Services until all outstanding payments are current. Client shall reimburse Company for all costs and expenses incurred by Company in connection with the collection or attempted collection of any past due amounts from Client.

5. CONFIDENTIALITY.

5.1 Non-Disclosure and Use. Client acknowledges that, during the Term, Client shall have access to highly sensitive and proprietary information regarding Company that Client would not otherwise encounter but for this Agreement. In consideration of the foregoing, Client covenants and agrees that, during the Term and at all times thereafter, Client shall (a) hold in strict confidence and safeguard the Confidential Information (as defined below), (b) not disclose, disseminate or make available to any third party the Confidential Information, and (c) not use, copy or otherwise benefit from the Confidential Information.

5.2 Definition of Confidential Information. For purposes of this Agreement, “Confidential Information” means any and all confidential and proprietary information of Company (whether transmitted or received by oral, written, electronic or any other means), including, without limitation, business plans, trade secrets, intellectual property, patents, trademarks, copyrights, know-how, data, inventions, models and strategies, developments, concepts, processes, technical or engineering developments, policies and procedures, marketing plans, marketing materials, negotiation strategies, compensation structures, pension and profit-sharing plans, contracts, leases, agreements, pricing and cost information, financial statements, balance sheets, financial projections, tax records, accounting procedures, assets and liabilities, claims, settlements, pending or threatened litigation of any nature, personnel history, customer lists and any other information concerning the business or affairs of Company. Confidential Information shall include information that is based upon or derived from Confidential Information.

5.3 Title to Confidential Information. Client acknowledges and agrees that all Confidential Information shall be the sole and exclusive property of Company. This Agreement shall not confer upon Client, or be a basis for implying, any license, interest or rights of any kind in or to the Confidential Information. Upon the termination, expiration or non-renewal of this Agreement, Client shall immediately return to Company any and all Confidential Information that Client may have in Client’s possession, and any copies thereof in any format.

5.4 Disclosures Required by Law.

5.4.1 General. If Client becomes legally obligated to disclose any Confidential Information, Client shall provide Company with prompt written notice so that Company may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, or if Company waives compliance with the provisions of this Agreement in writing, Client shall furnish only that portion of Confidential Information that Client is legally required to disclose.

5.4.2 Freedom of Information Law. The NY State FOIL (Freedom of Information Law) provides for public access to information the Client possesses. Public Officers Law, § 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise". Information submitted to Client that the Company wishes to have treated as proprietary and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to exempt it from disclosure, including a written statement of the reasons why the information should be exempted. *See* Public Officers Law, § 89(5) and the procedures set forth in 21 NYCRR Part 501. However, Client cannot guarantee the confidentiality under FOIL of any information submitted.

5.5 Remedies. In light of the sensitive and proprietary nature of the Confidential Information protected hereunder, Client acknowledges and agrees that Company shall be entitled to enforce this Agreement by seeking an injunction to enjoin and restrain the unauthorized disclosure or use of the Confidential Information. Nothing herein shall be construed as limiting Company’s right to seek any other remedies available Company for Client’s breach or threatened breach of this Section 5, including, without limitation, monetary damages. If Client breaches or threatens to commit a breach of any of

the covenants set forth in this Section 5, Client shall reimburse Company for all costs and expenses incurred by or on behalf of Company in connection with enforcing Company's rights hereunder.

6. RELATIONSHIP OF THE PARTIES.

6.1 Independent Contractors. No provision of this Agreement is intended to create, or shall be deemed or construed to create, any relationship between the Parties hereto other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement. Neither Party, nor any of their respective employees, agents or representatives, shall be construed to be the agent, employee, or representative of the other, nor shall either Party have an express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the other Party except as otherwise set forth herein.

6.2 No Benefits. Each Party shall be responsible for the payment of all applicable federal, state and/or local income or occupational taxes, social security taxes, disability taxes, unemployment compensation or worker's compensation contributions, vacation pay, sick leave, retirement benefits or any other similar withholdings or payments with respect to its employees. Employees of one Party shall have no right to participate in any employee benefit plans sponsored by the other Party, nor shall employees of one Party be entitled to receive any fringe benefits, expense reimbursements or any items of a similar nature from the other Party.

7. LIMITATION ON LIABILITY.

7.1 LIMITATION ON LIABILITY. IN NO EVENT SHALL COMPANY BE LIABLE TO CLIENT OR ANY OF CLIENT'S OFFICIALS, OFFICERS, EMPLOYEES, CONTRACTORS, AGENTS OR REPRESENTATIVES FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY FOR ANY DAMAGES ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT EXCEED FIFTY PERCENT (50%) OF THE FEES PAID TO COMPANY HEREUNDER DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE ACT OR OMISSION RESULTING IN LIABILITY, REGARDLESS OF THE FORM OF ACTION.

8. INDEMNIFICATION

8.1 The Company shall be responsible for all damage to life and property due to negligent activities caused by it, its subcontractors, agents, or employees in connection with its Services under this Agreement. The Company specifically agrees that its subcontractors, agents, or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular Services they perform. Further, it is expressly understood that the Company shall indemnify and save harmless the Client from claims, suits, actions, damages and costs of every name and description resulting from the negligent performance of the Services performed under the scope of this Agreement, and such indemnity shall not be limited by reason of enumeration of any insurance coverage herein provided. Negligent performance of Services, within the meaning of this Article shall include, in addition to negligence founded upon tort, negligence based upon the Company's failure to meet professional standards and resulting in obvious or patent errors in the performance of its work.

9. MISCELLANEOUS.

9.1 **Entire Agreement.** This Agreement and the Exhibits attached hereto constitute the complete and exclusive statement of the agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, written, oral or otherwise, with respect to such subject matter. No agreements, promises, covenants, representations, warranties or indemnities have been made or relied upon by any of the Parties hereto, other than those that are expressly set forth herein.

9.2 **Amendment; Waiver.** No amendment, modification, or waiver of any provision of this Agreement shall be binding unless in writing and signed by the Party against whom the operation of such amendment, modification, or waiver is sought to be enforced. No delay in the exercise of any right shall be deemed a waiver thereof, nor shall the waiver of a right or remedy in a particular instance constitute a waiver of such right or remedy generally.

9.3 **Assignment.** The Parties acknowledge and agree that this Agreement is a contract for personal services and that the benefits and obligations arising hereunder shall not be assigned, delegated or transferred by either Party, in whole or in part, to any other person or entity without the other Party's prior written consent; provided, however, that upon prior notice to Client, Company shall be permitted to assign this Agreement to an entity related to or affiliated with Company and/or to any subsequent acquirer of or successor in interest to all or substantially all of the assets of Company, without the consent of Client.

9.4 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective heirs, executors, administrators, successors and permitted assigns.

9.5 **Severability.** If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be legally invalid or unenforceable, then the validity and enforceability of the remainder of the Agreement shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with Applicable Law, and, in its modified form, such provision shall then be enforceable.

9.6 **No Strict Construction.** The Parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any Party hereto by virtue of the authorship of any of the provisions of this Agreement.

9.7 **Titles and Captions.** All articles, section and paragraph titles and captions contained in this Agreement are for convenience only and are not deemed a part of the context hereof.

9.8 **Use of Certain Terms.** All pronouns and any variations thereof are deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the persons may require. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation"; and the terms "hereof," "herein" and "hereunder" and words of similar import shall be deemed to refer to this Agreement (or such other cross-referenced document) as a whole and not to any particular provision, unless the context clearly indicates otherwise.

9.9 Governing Law; Forum. All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without giving effect to any choice of law or conflict of law rules or provisions that would cause the application of the laws of any other jurisdiction. The Parties hereby irrevocably: (a) agree that any suit, action or other legal proceeding arising out of this Agreement shall be brought exclusively in the federal or state courts of the State of New York; (b) consent to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waive any objection which they may have to the laying of venue of any such suit, action or proceeding in any of such courts.

9.10 Notices. Any notice or document required or permitted to be given under this Agreement shall be deemed to be given: (a) if deposited in the United States mail, postage, prepaid, certified mail, return receipt requested, on the third (3rd) day following mailing or (b) if deposited with a commercial overnight delivery service, on the day following deposit. Notice shall be addressed to the recipient at the first set forth above or such other address or addresses as the Parties may designate from time to time by notice satisfactory under this Section.

9.11 Further Assurances. Each Party agrees to promptly execute and deliver to the other Party such further documents, instruments and assurances and take such further actions as the other Party may reasonably request in order to carry out the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created hereunder.

9.12 Force Majeure. Except with respect to Client's monetary obligations hereunder, neither Party will be liable for any failure or inability to perform, or delay in performing, such Party's obligations under this Agreement if such failure, inability or delay arises from an extraordinary cause beyond the reasonable control of the non-performing Party; provided that such Party diligently and in good faith attempts to cure such non-performance as promptly as reasonably practicable.

9.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all the Parties reflected herein as the signatories. Signatures transmitted by facsimile or pdf/email transmission shall be deemed originals for this purpose.

9.14 No Third-Party Beneficiary. Except as specifically set forth herein, the provisions of this Agreement are intended to be and shall be binding upon and for the benefit of only the Parties hereto, and no provisions of this Agreement are intended to be or shall be for the benefit of any third-party, nor shall any third-party have any rights hereunder or any right to enforce the terms of this Agreement against any Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Laboratory Services Agreement effective on the date first written above.

COMPANY:

Sovereign Laboratory Services Limited Liability Company

By: _____
John Hajjar, M.D.,
President

CLIENT:

Village of Croton-on-Hudson

By: _____

Print Name: _____

Title: _____