

SOURCE PATIENT TESTING SERVICES AGREEMENT

THIS SOURCE PATIENT TESTING SERVICES AGREEMENT, Effective as of November 1, 2016, is made by and between **City of Martinsburg Fire Department (CMFD)**, having its principal place of business at 200 North Raleigh Street, Martinsburg, West Virginia 25401 ("CMFD"), and **BERKELEY MEDICAL CENTER**, a West Virginia not-for-profit corporation, having its principal place of business at 2500 Hospital Drive, Martinsburg, West Virginia 25401 ("BMC") (each individually a "Party" or together collectively, "Parties").

WITNESSETH:

WHEREAS, CMFD is a city agency providing pre-hospital emergency care and transportation to the citizens and visitors of Berkeley County, West Virginia; and

WHEREAS, while responding to emergencies and while engaged in providing emergency care and/or transportation services to victims of an emergency, CMFD employees may be exposed to potentially life-threatening infectious diseases, including emerging infectious diseases, through exposure to blood, body fluids, airborne pathogens, or otherwise (herein an "Exposure"); and

WHEREAS, in the event of an Exposure to an employee, the employee so exposed will notify the CMFD Designated Infection Control Officer, or other administrative officer of CMFD, (herein the "DICO") responsible for managing exposure events; and

WHEREAS, if the DICO, upon evaluation of the facts presented, determines that the employee acting in the course of a *bona fide* medical emergency may have come into contact with a patient in such a way that an exposure to an infectious disease has occurred, the DICO may request testing of the source patient's blood; and

WHEREAS, BMC owns and operates a certified laboratory staffed by duly licensed professionals and which has the professional and technical capabilities to provide the services required by CMFD and to promptly and efficiently test source patient blood delivered to BMC by CMFD or its agents or drawn by BMC from any source patient in BMC's Emergency Department or admitted to BMC; and

WHEREAS, CMFD desires that BMC provide source patient testing services when requested, and BMC agrees to provide such source patient testing services for CMFD on the terms and conditions herein and in accord with applicable state and federal regulations; and

WHEREAS, BMC will only provide testing for those diseases which are specifically listed under 42 U.S. Code §300ff, as amended from time to time, and will anonymize the results of said testing before providing test results to the DICO; and

WHEREAS, CMFD will take sole responsibility for providing its employees with the results of tests conducted under the terms of this Agreement; and

WHEREAS, the Parties desire to place their agreements in writing.

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions, stipulations and agreements herein contained, the benefits to be derived hereunder by each of the parties hereto and the communities served by them, and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows

1. Duties of BMC

BMC shall, upon the presentation of the BMC "Source Patient Testing" form by a CMFD employee with the approval of CMFD's DICO, perform standard and routine laboratory tests upon any source patient blood delivered to BMC by CMFD or its agents or drawn by BMC employees. Anonymized results of the test will be delivered to the DICO. Responses shall be made within forty-eight (48) hours of receipt of the request.

2. Fees and Compensation

Fees for the testing service will be at the then current established and published list price maintained by BMC. BMC will bill CMFD for each test service. Payment shall be due within thirty (30) days of invoice.

3. Term

Unless terminated sooner as hereinafter provided, this Agreement shall be effective for a one (1) year term, October 1, 2016 through September 30, 2017, and shall automatically renew for additional one (1) year terms thereafter until terminated by the Parties as provided for herein.

4. Termination

Any party, with or without cause, may terminate this Agreement at any time by giving thirty (30) days' advance written notice. The foregoing notwithstanding, this Agreement may be terminated with ten (10) days' written notice for failure of any party to comply with a material term or condition of this Agreement, following a reasonable period of time to cure any such failure. Should this Agreement, in the reasonable opinion of counsel for any party, be determined to be in violation of any statute, law or regulation, including, but not limited to, Stark or fraud and abuse laws, and not susceptible of being made compliant, this Agreement may be terminated immediately upon notice.

5. Notices

Any written notice required by this Agreement shall be sent by certified mail, return receipt requested, to the address given below or to such later address as may be specified in writing, or by facsimile transmission with a written confirmation of receipt. In the absence of other evidence, receipt of certified mail shall be deemed had as of five (5) business days following mailing. Receipt of facsimile shall be as of the date of confirmation. Any prior written

notice periods required by this Agreement shall be deemed to be effective upon receipt if sent in accordance with this notice provision.

If to BMC: Berkeley Medical Center
Chief Executive Officer
2500 Hospital Drive
Martinsburg, West Virginia 25401

If to CMFD: Infection Control Group
City of Martinsburg Fire Department
200 North Raleigh Street
Martinsburg, West Virginia 25401

6. Liability Insurance

BMC agrees to provide and maintain professional and general liability insurance through its bona fide program of self-insurance covering the professional services to be provided for under this Agreement.

7. Independent Contractor Relationship

In the performance of this Agreement, each party hereto shall be, as to the other, an independent contractor, and neither party shall have the right or authority, expressed or implied, to bind or otherwise legally obligate the other party. Nothing contained in this Agreement shall be construed to constitute either party assuming or undertaking control or direction of the operations, activities or medical care rendered by the other.

8. Indemnity Release

Each party agrees that it shall be responsible for all demands, claims, damages to persons and/or property, losses or liabilities, including reasonable attorney fees, arising out of or caused by the party's negligence or intentional misconduct, if assessed by a court of competent jurisdiction to be the responsibility of that party.

9. Access to Records

Until the expiration of four (4) years after the furnishing of services hereunder, the parties shall make available, upon written request, to the Secretary of Health and Human Services or, upon written request, to the Comptroller General of the United States, or any of their duly-authorized representatives, this Agreement, including all amendments hereto, and all books, documents and records of parties that are or may be necessary to certify the nature and extent of costs for services provided hereunder. If and to the extent that this provision is no longer required by law or governmental regulation, this provision shall have no force or effect.

10. Non-Exclusion

The parties represent and warrant, as appropriate, that neither they nor any of their affiliates or employees providing Health Services hereunder (a) are excluded from participation in any federal health care program, as defined under 42 U.S.C. §1320a-7b (f), for the provision of items or services for which payment may be made under such federal health care programs, and (b) has arranged or contracted (by employment or otherwise) with any employee, contractor, or agent that such party or its affiliates know or should know are excluded from participation in any federal health care program, to provide items or services hereunder. Furthermore, each party represents and warrants that no final adverse action, as such term is defined under 42 U.S.C. §1320a-7e (g), has occurred or is pending or threatened against it or its affiliates or to their knowledge against any employee, contractor, or agent engaged to provide items or services under this Agreement or any other agreement between the parties (collectively "Exclusions/Adverse Actions").

11. Referrals

The parties acknowledge that this Agreement is not conditioned on, nor is there a requirement or expectation of, any referrals or other business generated for any other party, and, further, that no purpose of this Agreement is to induce any party to make referrals of patients to any other party or its affiliates.

12. Severability

If any portion of this Agreement shall for any reason be invalid, illegal, unenforceable, or otherwise inoperative, the valid and enforceable provisions will continue to be given effect and to bind all parties.

13. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia, exclusive of its conflicts of laws provisions, and it shall be construed in a manner as to conform to all federal, state and local laws and regulations.

14. Use of Name

No party shall use the name or logo of any other party or its trade, assumed, or true names in any advertising, promotional, or other materials without the prior written consent of that party as required by law.

15. Entire Agreement

This Agreement embodies the entire agreement of the parties as regards the subject matter hereof. There are no premises, terms, conditions or obligations between the parties other than those contained herein, and this Agreement supersedes all previous communications, representations and agreements, either verbal or written, between the parties hereto relating to the subject matter hereof.

16. Assignment

This Agreement may not be assigned by any party without the prior written consent of the other party which consent shall not be unreasonably withheld, delayed or conditioned.

17. Modifications

This Agreement may be modified at any time upon mutual consent in writing of the parties signed by all the parties hereto. Any proposed change must be made in writing, delivered in person or by registered mail to the other party.

20. No Exclusive Arrangement

Nothing contained herein shall be construed as creating an exclusive arrangement between the parties all of whom may contract to provided or to obtain the same or similar services from third parties as they see fit.

21. Titles

The titles and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

22. Applicable Rules and Regulations

CMFD and BMC shall comply with all applicable statutes, rules, regulations, licenses and authorizations of any governmental or public body or authority in connection with the performance of the services provided hereunder.

23. No Waiver; Effect of Waiver

Failure by any party to insist upon the strict performance of any provision in this Agreement or to exercise any right, power or remedy to which it may be entitled as a result of a breach hereof, shall not constitute a waiver of any such provision or breach. No waiver of any breach shall affect or alter this Agreement, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

24. Compliance

It is the intention of the parties to comply with all federal and state laws, rules, and regulations including, but not limited to, all Stark and Anti-Kickback laws, and any and all subsequently enacted laws or regulations. In the event any portion of this Agreement violates any law, rule, or regulation, then the parties shall take all steps necessary to bring this Agreement into compliance including, if necessary, terminating this Agreement.

The Parties further acknowledge that none of the benefits granted the Parties under this Agreement is conditioned on any requirement or expectation that the Parties make referrals to, be in a position to make or influence referrals to, or otherwise generate business for the other Party or individuals or organizations related to or affiliated with any of the Parties. No purpose of this agreement is to induce referrals for services or admissions of patients by or between the Parties hereto, or their affiliates or related persons or entities. The Parties further acknowledge that neither party is restricted from referring any service to, or otherwise generating any business for any other entity of their choosing. Referrals shall be made in the best medical interests of the patient.

25. Compliance With The Law

Each party shall exercise its rights and perform its duties and obligations under this Agreement in compliance with all applicable laws.

26. HIPAA

CMFD and BMC state that each of them has trained or caused to be trained all individuals provided services pursuant to the terms of this Agreement in the regulations pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH") and its implementing regulations. CMFD and BMC further state that they will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information which is created, received, maintained, or transmitted on behalf of the CMFD. Specifically, CMFD and BMC agree that they will meet the applicable organizational requirements of 45 CFR §164.314, and will comply with the HIPAA privacy and security regulations as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH") and its implementing regulations.

27. Counterparts/Signatures

This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one of the same instrument. Signatures by facsimile or digital scan in portable document format shall be deemed to be valid, effective and binding for all purposes as if original signatures

28. Release of Records

Documentation of lab results related to the source blood testing will be released to CMFD's DICO.

IN WITNESS WHEREOF, the Parties, intending to be legally bound hereby for themselves their successors and permitted assigns, have duly executed this Agreement intending the same to be effective as of the date and year first above written.

BERKELEY MEDICAL CENTER

Anthony P. Zejenka
President & Chief Executive Officer

Date: 1-16-17

City of Martinsburg Fire Department

George Karos
Mayor

Date: 1/12/17