

COVID-19 Testing Services Agreement for San Mateo County Schools

This Agreement is entered into effective as of September 28, 2020 (the "Effective Date"), between Curative Labs, Inc., with offices located at 430 South Cataract Ave, San Dimas, CA 91773 with clinical laboratories certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (collectively, "Curative"), and the San Mateo County Office of Education, with offices located at 101 Twin Dolphin Drive, Redwood City, CA 94065-1064 ("SMCOE"). Curative and SMCOE shall be referred to hereafter individually as a "Party" and collectively as the "Parties" to this Agreement.

On July 17, 2020, the California Department of Public Health ("CDPH") issued guidance stating: "Once schools are re-opened to at least some in-person instruction, it is recommended that surveillance testing be implemented based on the local disease trends. ... School districts and schools shall test staff periodically, as testing capacity permits and as practicable."

SMCOE wishes to engage Curative as a provider of COVID-19 testing Services for the purposes of screening its employees and students for working and learning on-site, upon the terms and conditions set forth in this Agreement and further described in Exhibit "A". The frequency of testing, test schedule and test sites shall be mutually agreed upon by the Parties.

The Parties further wish to allow public school districts in San Mateo County to access COVID-19 testing Services through this Agreement, as set forth in the district-specific Exhibits attached to this Agreement.

In consideration of the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

1. Important limitations of the COVID-19 Employer Testing Service:

- a. All employees using the Services must sign a **Consent & Release Form** prior to the collection of samples to Curative as described herein and affirm they have sought in-network coverage before using our test.
- b. It is the SMCOE's responsibility to obtain the employee consent and release, and the SMCOE covenants that it will obtain consent and release from all employees submitting a sample for the Services prior to shipping the samples to Curative.
- c. It is the SMCOE's responsibility to associate/link the barcode on each collection device to individual employees.
- d. The SMCOE understands:
 - i. As with all tests, there is a risk of false negatives. There is also a risk that some infected individuals may have some level of COVID-19 infection below the sensitivity of the testing method.
 - ii. There is an on-going risk of COVID-19 infection, so repeat testing of employees on a regular basis should be considered as appropriate.

- iii. Influenza and other infectious diseases are not tested for under the Service. This Service only tests for the presence of the virus that causes COVID-19 (SARS-CoV-2).
- iv. In accordance with CDC guidelines, employees displaying flu-like or COVID-like symptoms during sample collection should be sent home and instructed to contact their personal medical provider and self-isolate.

2. Term

The term of this Agreement shall be from September 28, 2020, to June 30, 2022, unless terminated earlier by either party, as set forth in Section 12.

3. Testing Services; Curative Certification and Standard of Work

(a) Services: Curative shall provide the Services in accordance with service ordering and delivery instructions provided by SMCOE. Curative will perform all Services under this Agreement in a professional and timely manner consistent with applicable laws as they relate to COVID-19 testing services. SMCOE will provide a licensed physician for the doctor's order for the testing under this Agreement. SMCOE understands Curative will not provide a medical review by a physician in the Services under this Agreement.

(b) Turn Around Time/Non-Reportable Rate: Curative shall use commercially reasonable efforts to ensure that its turnaround time for electronic delivery of COVID-19 testing results to the SMCOE Representative of the SMCOE typically within 48 hours from the time of specimen receipt at Curative. All test results shall be provided electronically to the customer. It is not uncommon for some percentage of samples to fail quality control and have a non-reportable result.

(c) The SMCOE Representative will serve as the primary point of contact and will contact Curative as needed, and the SMCOE Representative will be required to complete Curative's prescribed shipping, safety and private health information (PHI) training prior to assuming this role.

(d) All test results performed by Curative shall be reported to the SMCOE Representative. The SMCOE Representative shall provide all required information that is necessary for Curative to meet its reporting obligations as a clinical laboratory. Curative shall be responsible for all required COVID-19 test reporting to federal, state, and/or local health authorities in accordance with applicable laws and regulations.

4. Certifications

All testing performed by Curative shall be in accordance with applicable state and federal requirements. Curative shall maintain required licenses, permits, and certifications as required under applicable law and regulation for Curative and its designated laboratories to perform the Services ("Required Approvals").

SMCOE certifies that its employees are Essential Workers as defined by California state law and emergency COVID-19 rules (Cal Code Regs. Tit. 28, §1300.67.01).

5. Pricing and Payments

SMCOE asserts that it has sought in-network medical insurance coverage for the testing of its employees prior to requesting testing by Curative. Curative shall invoice SMCOE's medical insurance carrier for all testing of SMCOE's covered employees.

As it relates to SMCOE requesting that the Services be provided to students, the Parties agree to the payment terms set forth in Exhibit "A".

6. Customer Support

Customer Support: Curative will provide SMCOE support with troubleshooting, questions on billing, or other service-related questions via both email and phone during normal business hours and in a timely manner.

7. Representations and Warranty

(a) Curative represents that all protected health information (PHI) will be encrypted and protected within Curative's systems in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and implementing regulations and will use PHI solely for the Services provided for herein and in accordance with each employee's authorization/consent.

(b) Warranty: Curative warrants the Services are performed by a CLIA-certified laboratory.

(c) Warranty; Limitation of Damages. EXCEPT AS OTHERWISE SET FORTH IN THE AGREEMENT, CURATIVE MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED ARE HEREBY DISCLAIMED. CURATIVE DISCLAIMS ANY LIABILITY ARISING FROM ANY DECISION OR DETERMINATION BY SMCOE OR THIRD PARTY CONCERNING WHETHER ANY EMPLOYEE OR CONTRACTOR'S PRESENCE IN THE WORKPLACE IS SAFE IF MADE, IN WHOLE OR IN PART, ON THE RESULTS OF THE SERVICES PROVIDED UNDER THE TERMS OF THIS AGREEMENT. EXCEPT IN THE CASE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, COST OF COVER, OR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE. IN NO EVENT SHALL CURATIVE'S LIABILITY UNDER THIS AGREEMENT EXCEED \$500.00.

8. Methods Modified or Added During the Contract Period

Due to the evolving nature of the COVID-19 crisis and available test solutions, Curative may provide additional service options, collection devices, reporting, or modify the existing Service offering. Curative shall notify SMCOE of the change and provide training to SMCOE as necessary to provide reliable Services.

9. Confidential Information

(a) Confidential Information: Curative and SMCOE acknowledge that they may gain access to the confidential business information of the other and/or its affiliates in the course of performing

their obligations under this Agreement. Except as required by law or legal process, Curative and SMCOE each agrees that it will hold in confidence, safeguard, and not use (except as required by those employees, officers, directors, or consultants, acting pursuant to this Agreement or as required by law or legal process) or disclose, disseminate or make available to third parties, except the SMCOE's affiliates, information related to proprietary research techniques and technology, types of supplies, pricing for supplies, patient information (including but not limited to, social security numbers, addresses, insurance information, results, and diagnosis information), and any other confidential information of the disclosing party and/or its affiliates at the time of disclosure (together "Confidential Information"). Curative and SMCOE each agrees to treat such Confidential Information it receives from or on behalf of the other with the same degree of care that it treats its own proprietary information, but with no less than a reasonable degree of care.

(b) Exceptions to Confidential Information: Notwithstanding subsection (a) above, information shall not be deemed Confidential Information if it (i) is or becomes generally known to the public through no unlawful act of the recipient; (ii) was known to the recipient at the time of disclosure; (iii) is disclosed with the prior written approval of the disclosing party; (iv) was independently developed by the recipient without any use of the disclosing party's Confidential Information; (v) becomes known to the recipient from a source other than the disclosing party without breach of this Agreement and otherwise not in violation of the disclosing party's rights; or (vi) is required to be disclosed in accordance with law or court order.

(c) Return of Confidential Information: Each party shall promptly return or destroy all Confidential Information of the other party it holds in written form and all copies of it, in any format, upon the other party's written demand or the expiration or termination of this Agreement, except for Confidential Information that may be incorporated in any information that the recipient is required to maintain by law to verify the work that it performed, which may be retained by the recipient subject to the restrictions contained in this Section 9. For the avoidance of doubt, retention of electronic back-up and archival copies of Confidential Information maintained pursuant to regular data archiving and record retention policies and practices shall not be deemed to be a violation of this Agreement.

(d) Confidential Health Information. The Parties acknowledge that, in the performance of the Services under this Agreement, they may have access to certain sensitive or private information related to the health or well-being of an individual or individuals ("Confidential Health Information") which is stored by or accessible to the other Party. Each of the Parties agrees to: (i) use or disclose the Confidential Health Information only as such Party is required to use or disclose such information in connection with the matters referred to in this Agreement; (ii) safeguard such information to the same extent as it does its own Confidential Health Information and proprietary information; (iii) limit the making of any copies, extracts or reproductions of Confidential Health Information to those occasions which are necessary to carry out the duties under this Agreement and safeguard the copies, extracts or reproductions made of such information; (iv) not use such information after termination of this Agreement for any reason unless otherwise agreed; and (v) access only the Confidential Health information which is necessary to perform the duties under this Agreement.

(e) HIPAA/Protected Health Information. Except as required by law to report certain data pertaining to COVID-19 testing, all test results shall be kept confidential in accordance with all HIPAA and PHI standards. In the event that any PHI within the meaning of the Health Insurance Portability and Accountability Act of 1996, and its amendments thereto, including 45 CFR Parts

160 and 164, as amended by the Health Information Technology for Economic and Clinical Health Act and the Final Omnibus Rules (collectively "HIPAA") is received by Curative, Curative shall comply with all applicable requirements under HIPAA to safeguard such PHI and prevent the use or disclosure of such PHI other than as provided for under this Agreement. Each of the Parties will, and will cause their respective personnel to, comply with its own applicable obligations under HIPAA and other guidelines, policies and regulations pertaining to using patient samples and PHI.

10. Indemnification, Insurance

(a) Indemnification. Subject to Section 7(c), each Party agrees to indemnify, defend and hold harmless the other Party and its members, managers, directors, officers, employees, representatives and agents from and against any and all third party claims, demands, actions, losses, expenses, damages, liabilities, costs (including, without limitation, interest, penalties and reasonable attorney's fees) and judgments for any bodily injury, property damage or any other damage or injury to the extent caused by the indemnifying Party or any of its employees or agents (i) breach of this Agreement or applicable law, and (ii) negligence, gross negligence or willful misconduct; except, in each case, to the extent that such claim arises out of or results from the negligence, gross negligence or willful misconduct of the indemnified Party or any of its employees or agents.

(b) Insurance: Curative agrees to maintain professional liability and commercial general liability insurance to cover its Services provided hereunder in the minimum amounts of One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) annual aggregate. Curative agrees to furnish SMCOE upon request with a current and valid certificate of insurance from Curative's insurance carrier verifying the nature and amounts of coverage and Curative agrees to keep and maintain such insurance coverage in full force and effect during the term of this Agreement.

11. Regulatory Compliance

Compliance with Law/Material Breach: Each party represents and warrants that in the performance of its obligations under this Agreement, it will comply with all applicable laws. Failure by either party to comply with any applicable law as required hereby shall be considered a material breach of this Agreement. In the event of a determination that this Agreement is not in compliance with any Applicable Law, then the parties shall negotiate in good faith to bring this Agreement into compliance. All amendments to this Agreement to bring this Agreement into compliance must be mutually agreed to by both parties in writing. If such agreement cannot be reached, either party may terminate this Agreement by written notice to the other party.

12. Termination

This Agreement may be terminated as follows:

(a) In the event of a substantial failure by either Party to perform in accordance with the terms hereof, the non-defaulting party may terminate this Agreement upon three (3) days written notice setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of the non-defaulting party.

(b) Either Party may terminate this Agreement for convenience at any time upon three (3) days prior written notice to the other Party. Any outstanding balances owed by SMCOE to Curative, shall be paid within ten (10) business days of such termination for convenience.

13. Miscellaneous

(a) Assignment: Without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld, neither party may assign any of its rights or obligations hereunder. Notwithstanding anything to the contrary herein contained, either party may assign its rights or obligations hereunder in the entirety (i) to its parent or any subsidiary or successor corporation without prior written consent and (ii) in connection with a merger, reorganization, consolidation, change of control, or sale of all or substantially all of the assets to which this Agreement pertains; provided, however, that nothing contained herein shall release the assigning party from its obligations hereunder. Subject to the foregoing, this Agreement inures to the benefit of, and is binding upon, the successors and assigns of the parties hereto.

(b) Notice: Except as otherwise expressly provided in this Agreement, all notices hereunder shall be in writing, personally delivered, sent by certified mail, return receipt requested, or by confirmed email, addressed to the other party as follows:

If to Curative:
430 South Cataract Ave
San Dimas, CA 91773

If to SMCOE:
Nancy Magee, San Mateo County Superintendent of Schools
San Mateo County Office of Education
101 Twin Dolphin Drive
Redwood City, CA 94065-1064

Either party may change its address to which notices shall be sent by a notice that conforms to the requirements of this subsection.

(c) Entire Agreement: This Agreement, including Exhibits, contains the entire understanding between SMCOE and Curative and supersedes any and all prior agreements, understandings, and arrangements between them relating to the subject matter hereof. No amendment, change, modification or alteration of the terms and conditions hereof shall be binding unless in writing and signed by the Parties to be bound.

(d) Choice of Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its choice of law rules, and any lawsuit concerning or arising out of this Agreement shall be venued in the County of San Mateo or in the United States District Court for the Northern District of California.

(e) Waiver: The failure of either Party to this Agreement to exercise or enforce any right conferred upon it hereunder shall not be deemed to be a waiver of any such right nor operate to bar the exercise or performance thereof at any time or times thereafter, nor shall a waiver of any right hereunder at any given time be deemed a waiver thereof for any other time.

(f) **Severability:** It is the intention of the Parties that the provisions of this Agreement shall be enforceable to the fullest extent permissible under applicable laws, and that the invalidity or unenforceability of any provisions under such laws will not render unenforceable, or impair, the remainder of the Agreement. If any provisions hereof are deemed invalid or unenforceable, either in whole or in part, this Agreement will be deemed amended to modify, or delete, as necessary, the offending provisions and to alter the bounds thereof in order to render it valid and enforceable.

(g) **Non-Exclusive Arrangement:** Curative acknowledges that this is a non-exclusive arrangement and that this Agreement places no restrictions on SMCOE's ability to use other laboratories and that SMCOE does not guarantee any minimum volume of specimens to be referred to Curative for Services under this Agreement.

(h) **Relationship of the Parties:** Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment relationship between the Parties. Neither Party is an agent of the other, and neither Party has any authority whatsoever to bind the other Party, by contract or otherwise.

(i) **Force Majeure:** Either Party shall be excused from non-performance or delay in performance to the extent that such non-performance or delay in performance arises out of causes beyond the control and without the fault or negligence of the non-performing Party. Such cases include, but are not limited to, acts of God, pandemics (including COVID-19), the public enemy or terrorism, laws or acts of any government in either its sovereign or contractual capacity, fires, floods, epidemics, pandemics, strikes or freight embargo. Each Party shall promptly notify the other of any such circumstances and its probable duration as a result of which such Party claims its inability to perform this Agreement.

(j) **Section Headings:** Section headings contained in this Agreement are for reference purposes only and shall not affect, in any way, the meaning and interpretation of this Agreement.

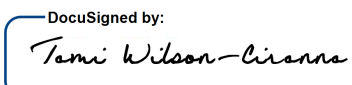
(k) **Execution in Counterparts:** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

(l) **Third Parties.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the Parties to it.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement effective as of the Effective Date.

Curative, Inc.

San Mateo County Office of Education

By: 
 Name: Tami Wilson-Ciranna
 Title: CFO

By: 
 Name: Nancy Magee
 Title: County Superintendent of Schools

Exhibit A

SCHOOL TESTING SERVICE DESCRIPTION, PRICE AND PAYMENT TERMS

Product Description:

Curative has developed a COVID-19 testing (i.e., qualitative detections of nucleic acid from SARS-CoV-2) that provides employers with cost-effective, confidential access to SARS-CoV-2 RNA testing for their employees and contractors (the “Services”) for the sole purpose of determining who may come on-site at SMCOE campuses and offices in order to maintain a safe workplace. The Services include:

- a. Delivery of sample collection kits based on the number of tests ordered
- b. Training on how to collect samples
- c. Transportation of samples to Curative lab
- d. Lab processing
- e. Reporting of results through Curative’s online portal

All employees must sign a consent and waiver form prior to receiving the Services, and the SMCOE must designate a SMCOE Representative that oversees the collection process, manages the de-identification of employee samples, and serves as a primary contact point. All test results are reported back to the SMCOE Representative, and it is the SMCOE’s responsibility to decide the frequency of Services and course of action based on test results.

Amount and Method of Payment:

Curative will bill SMCOE’s employees’ insurance or other third-party payors directly for the Services rendered pursuant to this Agreement. COVID-19 testing is a medically necessary basic health plan service for essential workers, including staff in the education sector. Health care plans must cover testing for school staff even if they are asymptomatic and there is no known or suspected exposure to a person with COVID-19. There is no cost to SMCOE for Services provided to its employees.

Student Testing:

If SMCOE requests that Services be provided to its students, Curative will make good faith efforts to bill students’ insurance or other third-party payors directly for the Services. If Curative does not receive payment from third party insurance programs for the Services provided to students including, but not limited to, due to lack of required authorization, non-covered charges, lapsed patient coverage, or outdated or incorrect patient or insurance plan submitted, Curative will bill the SMCOE directly within forty-five (45) days of third-party payor denial and the SMCOE will be responsible for payment of either \$30-40 per student, depending on which option below is utilized:

1. \$30 per student – Swabs from five students are placed in one test tube for “pool” testing. If the pool tests positive, it would require another test of the five students from Curative, or potentially utilize an “on hand” antigen test at the school to detect the positive student.
2. \$40 per student – Swabs from five students are placed in individual test tubes and the lab mixes them, which would result in a slightly lower sensitivity. If the “pool” were to test positive, Curative could then run individual tests.

Exhibit B

COVID-19 TESTING SERVICES FOR THE _____ SCHOOL DISTRICT

The _____ School District, located at [insert address] ("District"), desires to engage Curative as a provider of COVID-19 testing Services for the purposes of screening its employees and students for working and learning onsite, upon the terms and conditions set forth in this Exhibit and as further described in the September 28, 2020 COVID-19 Testing Services Agreement for Schools between Curative and the San Mateo County Office of Education.

The frequency of testing, test schedule and test sites shall be mutually agreed upon by Curative and the District.

Product Description:

Curative has developed a COVID-19 testing (i.e., qualitative detections of nucleic acid from SARS-CoV-2) that provides cost-effective, confidential access to SARS-CoV-2 RNA testing (the "Services") for the sole purpose of determining who may come on-site at District campuses and offices in order to maintain a safe workplace. The Services include:

- a. Delivery of sample collection kits based on the number of tests ordered
- b. Training on how to collect samples
- c. Transportation of samples to Curative lab
- d. Lab processing
- e. Reporting of results through Curative's online portal

All employees must sign a consent and waiver form prior to receiving the Services, and the District must designate a District Representative who oversees the collection process, manages the de-identification of employee samples, and serves as a primary contact point. All test results are reported back to the District Representative, and it is the District's responsibility to decide the frequency of Services and course of action based on test results.

Amount and Method of Payment:

Curative will bill the District's employees' insurance or other third-party payors directly for the Services rendered pursuant to this Agreement. COVID-19 testing is a medically necessary basic health plan service for essential workers, including staff in the education sector. Health care plans must cover testing for school staff even if they are asymptomatic and there is no known or suspected exposure to a person with COVID-19. There is no cost to the District for Services provided to its employees.

Student Testing:

If the District requests that Services be provided to its students, Curative will make good faith efforts to bill students' insurance or other third-party payors directly for the Services. If Curative does not receive payment from third party insurance programs for the Services provided to

students including but not limited to, due to lack of required authorization, non-covered charges, lapsed patient coverage, or outdated or incorrect patient or insurance plan submitted, Curative will bill the District directly within forty-five (45) days of third-party payor denial and the District will be responsible for payment of either \$30-40 per student tested, depending on which option below is utilized:

1. \$30 per student – Swabs from five students are placed in one test tube for “pool” testing. If the pool tests positive, it would require another test of the five students from Curative, or potentially utilize an “on hand” antigen test at the school to detect the positive student.
2. \$40 per student – Swabs from five students are placed in individual test tubes and the lab mixes them, which would result in a slightly lower sensitivity. If the “pool” were to test positive, Curative could then run individual tests.

All other terms and conditions of the September 28, 2020 COVID-19 Testing Services Agreement for Schools between Curative and the San Mateo County Office of Education shall apply to the District.

THIS AGREEMENT IS NOT VALID UNTIL SIGNED BY BOTH PARTIES.

Curative, Inc.

_____ School District

By: _____
Name:
Title:

By: _____
Name:
Title: Superintendent