

CONTRACT RIDER FOR Contra Costa COUNTY SCHOOL DISTRICTS

This Rider is attached to and made part of that agreement between Curative Labs Inc. (“Curative”), and **Contra Costa County Office of Education** (“Company”) dated **11/02/2020** (the “Agreement”), in which Curative has agreed to provide certain Services defined in the Agreement.

WHEREAS, Mount Diablo Unified School District (“District”) wishes to receive the Services from Curative; and

WHEREAS, District agrees to be bound by all of the terms and conditions of the Agreement; and

WHEREAS, in consideration for District entering into this Rider, Curative shall provide the Services as outlined in the Agreement, subject to all terms and conditions of the Agreement and this Rider, as listed below.

A breach by either Party to this Rider shall not terminate the Agreement.

A termination by District shall not be a termination of the Agreement by Company.

District, shall defend with counsel acceptable to Curative, indemnify, and save harmless Curative, and any of its officers, agents, employees, from and against any and all losses, claims, demands, damages, costs, expenses, attorney’s fees, or liability stemming from the providing of the Services by Curative, unless such stems from Curative’s employees or agents acts or omissions, deemed to be grossly negligent or tantamount to willful misconduct. District has no obligation to indemnify Curative, for the active or sole negligence or willful misconduct of Curative. The defense and indemnification requirements extend to claims occurring after the Rider is terminated or the Services are completed.

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

Curative Labs Inc.

mt. Diablo Unified School District

By: _____

By: _____

Name:

Name:

Title:

Title:

HIPAA BUSINESS ASSOCIATE AGREEMENT HIPAA COMPLIANCE

This Business Associate Agreement (“BAA”) is entered into by and between Curative Labs, Inc., and Curative Inc. (collectively referred to as “Curative”) as Covered Entity and **Mount Diablo USD**, as Business Associate, (in each case as those terms are further defined in Section 1(b)), and is effective as of March 1, 2021 (“Effective Date”). Covered Entity and Business Associate may be referred to herein collectively as “Parties” or individually as a “Party.” This BAA is incorporated into and made part of the Service Agreement (as defined below).

WHEREAS, Covered Entity and Business Associate entered into an agreement on March 1, 2021 for the provision and facilitation of testing services (“Services”) on behalf of Covered Entity (the “Service Agreement”).

WHEREAS, in connection with these Services, Business Associate accesses, creates, receives, maintains and/or transmits PHI from, to, or on behalf of Covered Entity, which information is subject to certain protections under the HIPAA;

WHEREAS, Curative Labs, Inc. and Curative Inc. is a “Covered Entity,” and has certain responsibilities with respect to PHI;

WHEREAS, this BAA defines the responsibilities and obligations of Business Associate with respect to the use and Disclosure of PHI in connection with the Service Agreement;

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

1. Definitions.

(a) Any capitalized term used, but not defined, herein shall have the meaning set forth in the HIPAA.

(b) The following terms are specifically defined as follows:

(i) “**Breach**” shall mean the impermissible, unlawful, or unauthorized acquisition, use, access, or Disclosure of Protected Health Information (“**PHI**”) (defined below) which compromises the security or privacy of PHI as set forth in the HIPAA interim final rule of 2009 and the HIPAA Omnibus Rule of 2013.

(ii) “**Business Associate**” shall have the meaning given to such term under HIPAA (45 CFR 160.103). It includes a third party that performs functions for or on behalf of a Covered Entity or another Business Associate and has access to Covered Entity’s PHI and/or uses such PHI in the performance of its functions. In reference to the Party to this BAA, Business Associate shall mean **Mount Diablo USD**.

(iii) “**Covered Entity**” has the same meaning as that term defined at 45 CFR 160.103, and in reference to the Party to this BAA, shall mean Curative.

(iv) “**Data Aggregation**” shall have the meaning given to such term under HIPAA and shall include the combining of PHI received or created by Business Associate to permit data analyses relating to healthcare operations of Covered Entity.

(v) “**Designated Record Set**” shall have the meaning given to such term under HIPAA and shall include patients’ (defined below) medical or billing records or any group of records which contains PHI that is used, in whole or in part, by or for Business Associate in rendition or facilitation of services Covered Entity.

(vi) “**Disclosure**” shall have the meaning given to such term under HIPAA, and includes the release, transfer, provision of access to, or divulging in any manner of information outside the entity or individual holding the information.

(vii) “**HIPAA**” means collectively the federal Health Insurance Portability and Accountability Act of 1996, Pub. Law 101-19, as amended from time to time, the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, and the HITECH Act of 2009, as implemented by the HIPAA Final Rule.

(viii) “**Minimum Necessary**” shall have the meaning given such term under HIPAA.

(ix) “**Patient**” shall have the same meaning as the term “individual” under HIPAA (45 CFR 160.103), and it also includes any person designated or serving as a personal representative of a Patient.

(x) “**Protected Health Information**” (“PHI”) shall have the meaning given to such term under HIPAA (45 CFR 160.103). It includes any individually identifiable health information, whether oral or recorded in any form or medium, limited to the information created or received by Business Associate or on behalf of Covered Entity (i) that relates to the past, present or future physical or mental health condition of the Patient; (ii) the provision of health care to Patient; (iii) or the past, present or future payment for the provision of health care to Patient.

(xi) “**Required by Law**” shall have the meaning given such term under HIPAA, and means a mandate contained in law that compels an entity to make a use or Disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil of an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the

production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

(xii) “**Secretary**” shall mean the Secretary of the Department of Health and Human Services or her/his designee.

(xiii) “**Security Incident**” shall mean any accidental, malicious or natural act that:

- (1) Results in a Breach of any of Covered Entity’s data;
- (2) Adversely impacts the functionality of the Covered Entity’s information network;
- (3) Permits unauthorized access to Covered Entity’s information network;
- (4) Impacts the integrity of Covered Entity’s files or databases including, but not limited to:
 - (5) Interface failures;
 - (6) Inadequate testing or change control procedures;
 - (7) Other failures, which result in the deletion or unauthorized changes to an electronic database.
- (8) Involves the loss or loss of control of an information technology resource owned or controlled by Covered Entity; or
- (9) Involves the use of Covered Entity’s technology resources for illegal purposes or to launch attacks against other individuals or organizations.
- (10) Involves a “Breach” of PHI.

(xiv) “**Subcontractor**” shall have the meaning given such term under HIPAA, and includes a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate. A subcontractor can also be a business associate.

2. **Obligations and Activities of Business Associate.**

(a) Business Associate agrees not to Use or Disclose PHI received or created by Business Associate except as permitted by this BAA, the Service Agreement, or as Required by Law. Without limiting the forgoing, Business Associate represents and warrants that Business Associate and Business Associate personnel are familiar with the requirements of HIPAA, shall comply with the provisions of this BAA, and all present and future provisions of HIPAA applicable to Business Associates.

(b) Without limiting the foregoing, to the extent the Business Associate will carry out one or more of the Covered Entity obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligations.

(c) Business Associate agrees to use appropriate administrative, physical and technical safeguards, and to comply with Subpart C of 45 CFR Part 164 with respect to ePHI, to prevent Use or Disclosure of PHI other than as provided for by this BAA and the Services Agreement.

(d) Business Associate agrees to report immediately to Covered Entity, and in any case within three (3) business days, any Use or Disclosure of PHI not provided for by this BAA or the Services Agreement of which Business Associate becomes aware, including a Breach of Unsecured PHI as required under 45 C.F.R. §164.410 and any Security Incident.

(i) For clarity, a Breach or Security Incident shall be considered “discovered” as of the first day on which the Breach or Security Incident is known, or reasonably should have been known, to Business Associate or any employee, officer, Business Associate Vendors or agent of Business Associate.

(ii) Any notice of a Security Incident or Breach shall include the identification of each Individual whose PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Security Incident or Breach, as well as any other relevant information regarding the Security Incident or Breach. Any such notice shall be directed to Covered Entity pursuant to the notice provisions of the Services Agreement with attention to the Privacy Officer; and via email to HIPAA@curative.com *provided, however*, that, notwithstanding anything to the contrary set forth in the Service Agreement, any notification obligations under this Section 2(d) shall be deemed satisfied only upon written acknowledgement by Covered Entity.

(e) Business Associate agrees to mitigate any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate or its employees, officers, Subcontractors or agents that is not permitted under this BAA (including, without limitation, any Security Incident or Breach). Business Associate shall keep Covered Entity fully apprised of all mitigation efforts of the Business Associate required under this Section 2(e).

(f) Business Associate shall ensure that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of Covered Entity as permitted under and pursuant to this BAA and/or Services Agreement agrees in writing to the same terms and conditions that apply to PHI under this BAA.

(g) Business Associate agrees to make available, within three (3) days of a request by Covered Entity, PHI that is maintained in a Designated Record Set (if any), to Covered Entity or an Individual, in each case as may be directed by Covered Entity, in order to satisfy the requirements under 45 C.F.R. §164.524.

(h) Business Associate agrees to make any amendment(s) to PHI maintained in a Designated Record Set (if any) as requested by Covered Entity pursuant to 45 C.F.R. §164.526,

or take other measures as reasonably necessary to enable Covered Entity to satisfy its obligations under 45 C.F.R. §164.526.

(i) Business Associate agrees to maintain and make available to Covered Entity the information required to provide an accounting of Disclosures, as reasonably necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.528.

(i) For clarity, if an Individual makes any request for access to PHI related to the forgoing Sections 2(e)-(g), Business Associate shall promptly forward such request to Covered Entity within three (3) business days of the request, and will cooperate with Covered Entity in matters relating to such request; *provided, however*, that in no case shall Business Associate reply directly to any Individual regarding such request.

(j) Business Associate agrees to make its internal practices, books, and records, regarding the Use and Disclosure of PHI created or received by the Business Associate on behalf of Covered Entity available to Covered Entity and the Secretary for purposes of (i) monitoring/auditing and (ii) determining compliance with the HIPAA.

(k) Business Associate shall comply with all the obligations required under all applicable laws, including but not limited to the Health Information Technology for Economic Clinical Health Act ("HITECH Act"), Title XIII of the American Recovery and Reinvestment Act of 2009. 45 C.F.R. Sections 164.308, 164.310, 164.312, and 164. The written policies and procedures and documentation required by 45 CFR Section 164.316 shall be made available to Covered Entity upon request. The additional requirements of the HITECH Act that relate to privacy and security and that are made applicable with respect to covered entities and business associates shall be and by this reference hereby are incorporated into this Agreement.

(l) Business Associate shall provide appropriate training to members of its workforce regarding HIPAA and the proper use and transmission of PHI under this Agreement.

3. Permitted Uses and Disclosures by Business Associate.

(a) Business Associate may not Use or Disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity.

(b) Without limiting Section 3(a), Business Associate may Use and Disclose PHI:

(i) To perform the Services set forth in the Service Agreement and as otherwise set forth in this BAA;

(ii) As Required by Law, including to report violations of law to appropriate Federal and State authorities;

(iii) For the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and

(iv) To provide Data Aggregation services to Covered Entity.

Any permitted Use or Disclosure under Section 3(b)(i)-(iv) shall be consistent with the Minimum Necessary requirements set forth in the HIPAA.

(v) Business Associate must review Covered Entity's Notice of Privacy Practices located on its website at <http://curative.com>;

4. Effect of Violation of Obligations

(a) If Business Associate violates or in any way fails to comply with any of its obligations under this Agreement, said violation shall also be considered a violation of its obligations under any other agreements between the Parties hereto. In the event of a violation of this Agreement by Business Associate, Covered Entity shall have the option to do the following:

(i) Provide Business Associate an opportunity to cure the violation, to the extent curable, and end the violation within a reasonable time specified by Covered Entity. If Business Associate does not cure the violation or end the violation as and within the time specified by Covered Entity, or if the violation is not curable, Covered Entity may terminate its obligations to Business Associate, including, but not limited to, its future payment obligations; or

(ii) Immediately terminate this Agreement and any other agreements between the Parties, if Covered Entity reasonably determines that Business Associate (i) has acted with gross negligence in performing its obligations; (ii) is in violation of the law; (iii) willfully has violated or is violating the privacy and security provisions of this Agreement; (iv) is unable to provide, if requested, written assurances to Covered Entity of its ability to protect the confidentiality and security of PHI; or (v) is unable to comply with its obligations under this Agreement. Such termination of this Agreement and any other agreements between the Parties shall be without prejudice to other legal remedies available to Covered Entity.

(b) Covered Entity may also report the violation to the Secretary if neither termination nor cure is feasible.

5. Term and Termination.

(a) Term. The Term of this BAA shall commence as of the Effective Date and, except for the rights and obligations set forth in this BAA specifically surviving termination, shall terminate upon the termination or expiration of the last Service Agreement, unless otherwise earlier terminated for cause in accordance with this Section 6.

(b) Termination by Covered Entity. In addition to any termination provisions set forth in the applicable Service Agreement, Covered Entity may terminate this BAA if Covered Entity determines that Business Associate has violated this BAA, and Business Associate has failed to cure such material breach of this Agreement or end the violation within thirty (30) days of notice by Covered Entity of such alleged breach.

(c) Effect of Termination. At any time during the term of the BAA, and upon termination or expiration of this BAA for any reason, Business Associate, with respect to any PHI received from Covered Entity or created, maintained, or received by Business Associate on

behalf of Covered Entity, shall return to Covered Entity or destroy (at Covered Entity's direction) any PHI that Business Associate maintains in any form. Business Associate shall direct any Business Associate Vendors to return or destroy PHI in accordance with Covered Entity's direction under this Section 6(c).

6. Indemnification.

(a) Business Associate agrees to indemnify, defend and hold harmless Covered Entity, and each of its or their respective employees, directors/trustees, members, professional staff, representatives and agents (collectively, the "**Indemnitees**") from and against any act or omission of Business Associate which gives rise to or results in any losses, fines, penalties, damages, expenses and assessments, costs judgments and awards (including attorney's fees) arising out of any claims, demands, actions, lawsuits or investigations in each case brought by a third party and which arise out of, result from or are connected to (i) cost of notification or remediation relating to notification required by law for individuals whose PHI or personal information have been inappropriately access or disclosed; or (ii) a breach of the terms and conditions of this BAA or a violation of HIPAA by Business Associate or its employees or agents (including anySubcontractors).

(b) To the extent Business Associate has limited its liability under the terms of the Services Agreement, whether with a maximum recovery for direct damages or a disclaimer against any consequential, indirect or punitive damages, or other such limitations, such limitation shall not apply to the following:

- (i) any indemnification obligation of Business Associate under Section 7(a);
- (ii) the costs of notifying Patients of a Breach involving their PHI as required by 45 C.F.R. § 164.400 *et seq.*;
- (iii) any civil monetary penalties, fines, or other damages resulting from the action of any state or federal government agency as a result of the breach;
- (iv) fees of counsel, forensic computer specialists, and other consultants used to assist Covered Entity in responding to a Breach of PHI or any Security Incident and any subsequent investigation by a federal or state government agency; and
- (v) the defense of lawsuits brought by Patients alleging invasions of privacy, and any liability resulting from such lawsuits (whether in the form of a judgment or settlement), *provided* that Covered Entity shall have the opportunity to participate in the defense of such lawsuits and to approve any proposed settlement for which it would be financially responsible.

(c) This Section 7 shall survive termination or expiration of this BAA or Services Agreement(s) for any reason.

7. Miscellaneous.

(a) This BAA is governed by, and will be construed in accordance with, the laws of the State that govern the Services Agreement. Any action relating to this BAA must be

commenced within two years after the date upon which the cause of action accrued. This BAA may only be assigned in connection with an assignment of the Services Agreement. If any part of a provision of this BAA is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the remainder of that provision and all other provisions of this BAA will not be affected. All notices relating to the Parties' legal rights and remedies under this BAA will be provided in writing to a Party, will be sent to its address set forth in the Services Agreement, or to such other address as may be designated by that Party by notice to the sending Party, and will reference this BAA. This BAA may be modified, or any rights under it waived, only by a written agreement executed by the authorized representatives of the Parties. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for the Parties to comply with the requirements of applicable law. This BAA is the complete and exclusive agreement between the Parties with respect to the subject matter hereof, superseding and replacing all prior agreements, communications, and understandings (written and oral) regarding its subject matter. Any ambiguity in this BAA shall be resolved in favor of the meaning that permits the Parties to comply with applicable law and any current regulations promulgated thereunder. Any failure of a Party to exercise or enforce any of its rights under this BAA will not act as a waiver of such rights.

(b) This Agreement may be executed in counterparts, with each of the counterparts, taken together, deemed to be an original. Facsimiles and photocopies of this Agreement shall have the same force and effect as an original.

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IN WITNESS WHEREOF, the Parties have executed this BAA as of the Effective Date set forth above.

Curative Inc. and Curative Labs, Inc.

Mount Diablo USD

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

NOTEPAD

INSURED'S NAME **Curative, Inc.; Curative, LLC**

CURAT-1
OP ID: KP

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Date **11/17/2020**

General Liability:

Term Aggregate - all Coverages Combined - \$5,000,000
Each Claim - Products Medical Expenses Sublimit - \$10,000
Term Aggregate - Products Medical Expenses Sublimit - \$50,000
Each Claim - Products Medical Monitoring Expenses Sublimit - \$50,000
Term Aggregate - Products Medical Monitoring Expenses Sublimit - \$50,000

Umbrella covers the underlying policies:
General Liability/Professional Liability
Commercial Automobile Liability
Employers Liability