

AGREEMENT FOR COVID-19 TESTING SERVICES

THIS AGREEMENT FOR COVID-19 TESTING SERVICES (this “Agreement”) is made and entered into as of August 14, 2020 (the “Effective Date”), between SUMMERBIO LLC, a Delaware limited liability company (“Contractor” or “SummerBio”), and LOS ANGELES UNIFIED SCHOOL DISTRICT (the “District” or “LAUSD”) with reference to the following facts:

A. LAUSD is the second largest school district in the United States of America, serving over 670,000 students, pre-kindergarten through adult school, at over 1,300 schools and facilities across 720 square miles. LAUSD is also the second-largest employer in the County of Los Angeles, employing over 63,000 individuals.

B. The prevalence of COVID-19 (2019 Novel Coronavirus) (“COVID-19”) in Los Angeles County has forced LAUSD to drastically limit in-person classroom instruction and cease conducting business as usual at LAUSD facilities and has required LAUSD to temporarily close LAUSD facilities to students, faculty and staff.

C. The California Department of Education has published guidance on reopening California schools in light of the ongoing serious health risks to students caused by COVID-19. The Los Angeles County Department of Public Health is in the process of updating its guidance, in partnership with LAUSD, to reopen Los Angeles County schools. LAUSD has determined that the availability of safe, effective reliable COVID-19 testing is a prerequisite to reopening LAUSD schools and facilities.

D. LAUSD is authorized by Government Code § 53060 to contract with an independent contractor specially trained to perform special services as required.

E. Contractor provides end-to-end COVID-19 test systems designed to massively automate the existing gold-standard RT-qPCR.

NOW, THEREFORE, the parties hereto agree as follows:

1. TERM. The term of this Agreement shall be from the Effective Date until July 1, 2021 (the “Term”).
2. APPROVAL.
 - 2.1 This Agreement is of no force or effect until signed by both parties and approved by the Board of Education of the Los Angeles Unified School District (the “Board of Education”), or an authorized designee of the Board of Education. Contractor may not commence performance until such approval has been obtained.
 - 2.2 As further set forth in Section 13 below, the obligations of the parties to perform the Testing Services (as hereinafter defined) shall be subject to Contractor’s (i) submission of the EUA (as hereinafter defined) request following completion of the Pre-EUA Testing Criteria (as hereinafter defined) and (ii) receipt of any other applicable Permits (as hereinafter defined).

3. TESTING SERVICES.

- 3.1 Testing Services. Contractor shall provide services in accordance with **Exhibit A (Statement of Work)** (collectively, the “Testing Services”). The Testing Services shall include (i) manufacturing and delivering “gold standard” RT-qPCR COVID-19 collection kits meeting the Quality Specifications (as hereinafter defined) in all material respects (the “Collection Kits”), or equivalent PCR collection kits meeting substantially the same specifications during the Term, and (ii) processing Collected Samples (as hereinafter defined) and delivering the specified COVID-19 test results (“Test Results”) to the District in accordance with the mutually-agreed testing protocols and schedules, all as more particularly set forth on **Exhibit A**. Contractor shall deliver sufficient Collection Kits to enable the District to conduct COVID-19 tests (“Tests”) in accordance with the reserved testing capacity as more fully set forth on **Exhibit B (Contract Price and Delivery Schedule)** (the “Committed Amount”). Contractor agrees to timely deliver the Collection Kits and upon timely sample collection and return of Collection Kits containing samples properly collected and stored, to timely deliver the Test Results as set forth in the **Exhibits** attached hereto. If the District desires to increase its Committed Amount, it may do so in accordance with the terms set forth in **Exhibit B** and the Committed Amount shall be updated to reflect such increase. The District agrees to pre-purchase the Committed Amount for the Term, payable in accordance with the schedule set forth in **Exhibit B**.
- 3.2 Delivery of Collection Kits and Collection of Samples. Upon receipt of the Collection Kits, the District shall be solely responsible for (i) the delivery of the Collection Kits to LAUSD schools and facilities; (ii) ensuring individuals whose samples are collected for testing have received an order from a healthcare professional, to the extent required, in accordance with the indications for use of the Test as described in the Quality Specifications set forth in **Exhibit C**, and that healthcare professional has deemed it medically appropriate for that sample to be collected for testing; (iii) ensuring the collection of samples from individuals, at LAUSD’s sole cost and expense, is in accordance with the reasonable instructions provided by Contractor, including the conditions of use for sample collection as described in the Quality Specifications set forth in **Exhibit C**, and applicable law; (iv) obtaining all authorizations and consents required under applicable law for collecting such samples from individuals; (v) ensuring that the District receives all federal, state or local approvals required to collect the samples as contemplated in this Agreement and **Exhibit A**; (vi) ensuring that all individuals collecting samples pursuant to this Agreement have obtained the requisite training and are appropriately licensed, certified and/or authorized, as applicable, to collect the samples as required under applicable state laws and regulations and professional licensure and/or certification boards; (vii) scanning each test sample into the App (as hereinafter defined) at the time of collection; and (viii) ensuring all the collected information has been successfully transferred to the airports for delivery to Contractor as further described in **Exhibit A**. Contractor shall have no liability for the District’s failure to fulfill the aforementioned obligations.
- 3.3 Implementation. The parties acknowledge and agree that systems integration, testing, and other tasks need to be completed to enable the parties to conduct the Testing Services and process the Test Results. Accordingly, the parties agree to engage in the integration and other coordination activities specified in the implementation plan in **Exhibit A**, in

accordance with the respective responsibilities, dependencies and schedules set forth therein (collectively, the “Implementation Plan”). Except as set forth in **Exhibit B**, each party shall bear its own costs with respect to its activities under the Implementation Plan.

- 3.4 Training. At no additional cost to the District, and for the initial training as set forth in the Implementation Plan, Contractor shall provide “train the trainer” online training as may be reasonably requested by the District to train the staff and faculty of the District identified by the District on a not less than weekly basis to train the District’s staff on how to (i) collect the samples, (ii) use the App to log the Tests prior to shipment (in cooperation with Microsoft), (iii) appropriately package the Collection Kits to be returned to Contractor, and (iv) receive Test Results that the District may incorporate and process via the District’s systems. Following completion of the training programs identified in the Implementation Plan, Contractor will continue to provide up to forty (40) hours per week of such “train the trainer” online training services as may be reasonably requested by the District, at no additional cost to the District.
- 3.5 Mobile Application. The District, through Microsoft Corporation (“Microsoft”), shall be responsible for the design, development and implementation (including creative design; front end development, back end development, services integration and functional and nonfunctional mobile app testing) of a mobile application (the “App”) at District’s cost to be used by the District and Contractor to implement the Testing Services. The parties agree to work together, and with Microsoft through contracts to be determined, to help ensure that the App developed by Microsoft performs as needed to properly enable the Testing Services. As part of that collaboration, the District and Contractor agree to discuss the impact of Microsoft’s fees for development and management of the App on the Testing Services. The parties will also work together pursuant to the Implementation Plan to match Test Results to the individuals from whom samples were collected (the “Test Subjects”) and enable Contractor to fulfill regulatory reporting requirements as described in **Exhibit A**. The District shall be responsible for providing access to the App and hosting associated support services, and except as required to fulfill reporting requirements of governmental agencies, all Test Results will be hosted and stored by the District in accordance with mutually agreed technical specifications, including data security specifications. The District shall be responsible for the correlation of Test Results to District personnel and students upon receipt of Test Results from Contractor. The process by which the App will be used for the delivery of Testing Services and the allocation of responsibilities amongst the District and Contractor will be as more fully set forth in **Exhibit A**. The App will conform in all material respects to the technical specifications set forth on **Exhibit A**. The District and Contractor will test the App and revise the App and related data communications systems as may reasonably be requested by either party and agreed by both parties to ensure that the App effectively performs its integral function in support of the Testing Services. Microsoft may also provide updates and bug fixes to the App from time to time in its reasonable judgment. In addition, the parties will test as part of the Implementation Plan the systems modifications required of the District in order to receive Test Results electronically from Contractor and for the District to properly associate Test Results with the records of students, faculty and staff from whom the District collected samples, including to assist Contractor to meet and for itself to meet any applicable reporting requirements as described in the **Exhibits**. Contractor agrees to

provide the District reasonable and appropriate assistance for the District's integration efforts. For the avoidance of doubt, Microsoft or any other third-party assisting the District in developing, implementing, or hosting the App is not a Representative of Contractor as set forth in the Code of Conduct attached as **Exhibit D**.

- 3.6 Packaging and Labeling. Contractor will package and label the Collection Kits for delivery in accordance with Contractor's standard operating procedures, the Permits applicable to the Testing Services, and the requirements set forth on **Exhibit C (Quality Specifications)**, as may be reasonably revised from time to time by the parties from time to time by mutual written agreement (the "Quality Specifications"). Unless otherwise agreed in writing by the parties as the result of a change to the Quality Specifications, all costs and expenses of whatever nature incurred by Contractor in complying with the foregoing will be included in the Contract Price (as hereinafter defined) set forth on **Exhibit B**.
- 3.7 Delivery of Collection Kits. The parties acknowledge and agree that: (i) the Collection Kits shall be delivered to a single, primary LAUSD location designated by the District from time to time, by a Contractor-designated carrier, and (ii) Contractor shall deliver the Collection Kits each week during LAUSD's 2020 – 2021 school year in accordance with the delivery schedule set forth on **Exhibit B** and in accordance with this Agreement, which delivery schedule may be subject to adjustment as provided in this Agreement. Contractor will arrange the transportation of the Collection Kits from Contractor's manufacturing and/or packaging facility to the destination indicated by the District, from time to time. Transportation of the Collection Kits by Contractor to the primary LAUSD delivery location, whether or not under any arrangements are made by LAUSD, shall be made at the sole risk of loss and expense of Contractor.
- 3.8 Physical Receipt of Product. The District shall promptly examine the Collection Kits delivered by Contractor. Notice of all claims (time being of the essence) arising out of (i) visible damage to or total or partial loss of the Collection Kits in transit shall be given in writing to Contractor by the District within fifteen (15) calendar days following the District's inspection of Collection Kits and no more than thirty (30) calendar days after delivery of the Collection Kits (provided, however, during the occurrence and continuation of a new Force Majeure Event that begins after the Effective Date, or during standard scheduled District holidays, such thirty (30) day period shall be extended for the duration of the Force Majeure Event); or (ii) non-delivery shall be given in writing to Contractor within ten (10) calendar days after the scheduled date of delivery; provided that such delivery date must be communicated to the District by delivery of a shipping notice from Contractor to the District showing the scheduled date of delivery. The District acknowledges that the Collection Kits may have a defined shelf-life (if set forth on **Exhibit C**), and the District will be solely responsible for any expired and unused Collection Kits.
- 3.9 Damage Claims. Contractor shall promptly replace those Collection Kits identified by the District pursuant to Section 3.8 as damaged or missing. If such damaged or missing Collection Kits are not timely replaced such that the District is prevented from collecting samples in accordance with the Committed Amounts, then the District shall receive credits against future purchases of Testing Services for damaged or missing Collection Kits as

further set forth in **Exhibit B**. The District shall make damaged Collection Kits and associated packaging materials available for inspection and shall comply with the reasonable requirements of any insurance policy covering the Collection Kits.

- 3.10 Non-Conforming Collection Kits. If within fifteen (15) calendar days following the District's inspection of Collection Kits and no more than thirty (30) calendar days after delivery of the Collection Kits (provided, however, during the occurrence and continuation of a new Force Majeure Event that begins after the Effective Date, or during standard scheduled District holidays, such thirty (30) day period shall be extended for the duration of the Force Majeure Event, or the standard scheduled District holidays), the District notifies Contractor in writing that any Collection Kits delivered to the District fail to meet the Quality Specifications in accordance with the service level commitments set forth in **Exhibit C**, (each such Collection Kit being a "Non-Conforming Collection Kit"), Contractor shall promptly replace such Non-Conforming Collection Kits with Collection Kits that meet the Quality Specifications. If such Non-Conforming Collection Kits are not timely replaced such that the District is prevented from collecting samples in accordance with the Committed Amounts, then the District shall receive credits against future purchases of Testing Services for any Non-Conforming Collection Kits as further set forth in **Exhibit B**.
- 3.11 Return of Collected Samples. After collecting samples in accordance with Section 3.2, the District shall properly repackage and deliver completed Collection Kits ("Collected Samples") at the District's sole cost and expense to the two (2) drop off locations designated in **Exhibit A**, or as may otherwise be agreed in writing by the parties. Contractor will arrange the transportation of the Collected Samples from Contractor's designated drop off locations to Contractor's testing facility(ies). Contractor shall promptly inspect the Collected Samples upon receipt from the District. Transportation of the Collected Samples from the designated drop off locations, whether or not under any arrangements made by LAUSD, shall be at the sole risk of loss and expense of Contractor.
- 3.12 Delivery of Test Results. Contractor shall (i) process the Collected Samples as set forth in **Exhibits A and B** and substantially in conformance with the Quality Specifications set forth in **Exhibit C**. Subject to the foregoing, Contractor will deliver electronic Test Results for such Collected Samples to the District in accordance with **Exhibit C** following timely delivery of the Collected Samples by the District to Contractor's designated drop off locations, provided that the District must return the Collection Kits to Contractor prior to the times specified in **Exhibit A**. In accordance with Section 9.7, the District shall provide Contractor with all information necessary for Contractor to report Test Results to governmental authorities and/or to the ordering health care professional(s), and Contractor shall make such reports to the extent that Contractor is required by applicable laws to provide such reporting. As between the parties, the District is solely responsible for communicating Test Results to Test Subjects (as defined in **Exhibit A**); Contractor will provide reasonable support to the District with respect to such communications as specified in **Exhibit A**.
- 3.13 Sampling Method. The District and Contractor recognize that it is difficult to collect samples from younger student populations. If Contractor develops a less invasive testing

method, including an oral swab, during the Term that produces similarly accurate results to the Tests currently contemplated under this Agreement, then Contractor shall offer the District the right to substitute the current Collection Kits for the less invasive tests (subject to Contractor's receipt of Permits for such modifications to the Collection Kits) at a commercially reasonable price determined by Contractor, and Section 5 and **Exhibit B** shall be adjusted accordingly by the parties to accommodate any price adjustment.

- 3.14 Communications with Governmental Authorities. The District agrees to promptly notify Contractor of any governmental or regulatory inquiry or other communication received by the District concerning the Tests or Testing Services, and will use commercially reasonable efforts if legally permissible to assist Contractor to respond to any such inquiry for which Contractor has the responsibility to respond, and if legally permissible to forward to Contractor copies of any correspondence related to such inquiries.
- 3.15 Complaints and Adverse Events. As between the parties, unless required by the EUA or otherwise by applicable law, the District shall be the first point of contact with all Test Subjects and shall handle all questions and complaints from Test Subjects regarding the Testing Services. Contractor agrees to provide reasonable support to the District with respect to responses to Test Subjects regarding the Testing Services. The District agrees to forward any complaints associated with any Test or Test Results (including allegations of inaccurate Test Results) promptly upon receipt or awareness thereof; and shall reasonably cooperate with Contractor in obtaining sufficient information to enable Contractor to meet its regulatory obligations, including for reporting to FDA, as applicable.
4. INDEPENDENT CONTRACTOR. While engaged in performance of this Agreement Contractor is an independent contractor and is not an officer, agent, or employee of the District. Contractor is not entitled to benefits of any kind to which District's employees are entitled, including but not limited to unemployment compensation, workers' compensation, health insurance and retirement benefits. Contractor assumes full responsibility for the acts and/or omissions of Contractor's employees or agents as they relate to performance of this Agreement. Contractor assumes full responsibility for workers' compensation insurance, and payment of all federal, state, and local taxes or contributions, including but not limited to unemployment insurance, social security, Medicare, and income taxes with respect to Contractor and Contractor's employees. Contractor warrants its compliance with the criteria established by the U.S. Internal Revenue Service (I.R.S.) for qualification as an independent contractor, including but not limited to being hired on a temporary basis, having some discretion in scheduling time to complete contract work, working for more than one employer at a time, and acquiring and maintaining its own office space and equipment.

5. CONTRACT AMOUNT; PAYMENT.

5.1 The District shall pay Contractor the amount set forth on **Exhibit B** for the Committed Amount in accordance with Section 5.2 (all fees collectively, the “Contract Price”). The Contract Price may only be adjusted as expressly provided in this Agreement. Notwithstanding anything to the contrary set forth in this Agreement or **Exhibit B**, provided that the District fulfills its obligations hereunder, Contractor will provide as remedies for performance not meeting the delivery schedule or the Quality Specifications, the service level credits and adjustments set forth in **Exhibits B and C**. In the event of any overpayment by the District, Contractor shall credit the next payment made by the District to Contractor. Subject to Section 5.4, the Contract Price shall include all costs and expenses incurred by Contractor in performing the Testing Services, including all freight, shipping, and similar charges incurred by Contractor in delivering the Collection Kits to the District and returning the Collection Kits to Contractor’s testing facility(ies) upon receipt by Contractor (or Contractor’s courier) at the designated drop off locations.

5.2 Contractor shall invoice the District and the District will process payment in accordance with the schedule set forth in **Exhibit B**, after receipt of Contractor’s invoice(s) that meet the requirements of this Section. Invoices must (a) reference this Agreement, (b) be signed and submitted by Contractor to the locations identified below, and (c) itemize services, date(s), and payment rate(s) consistent with the terms of this Agreement. Any invoice(s) failing to meet the requirements set forth in this Section will not be considered for payment may be returned to Contractor for correction. Additional documentation shall be furnished by Contractor to the District’s Accounts Payable Branch upon request.

Mail original invoice(s):

Los Angeles Unified School District
Accounts Payable Branch
333 S. Beaudry Avenue, 27th Floor
Los Angeles, CA 90017

Mail one (1) copy of invoice(s) to:

Los Angeles Unified School District
333 S. Beaudry Avenue
Los Angeles, CA 90017
Attention:

or

email invoices to:

accounts-payable@lausd.net

With emailed copy to:

David.Hart1@lausd.net

5.3 Contractor’s taxpayer identification number is [REDACTED]. In the event Contractor elects to change its taxpayer identification number, Contractor shall provide the District with notice of such intention and the replacement number(s) upon Contractor obtaining same.

5.4 The District shall be responsible for and shall pay any applicable, separately itemized sales, use, excise or similar taxes arising from purchases of the Testing Services from Contractor pursuant to this Agreement, excluding taxes based on Contractor’s net income.

5.5 Contractor agrees to credit the District against future payments on a reasonable basis within forty-five (45) days of receipt for amounts received by Contractor, net of Contractor’s

actual, documented and reasonable costs, from the federal government or any other governmental or quasi-governmental agency relating to this Agreement or to Testing Services provided by Contractor to the District. If such government grant is received by Contractor at such time when the credits to be received by the District are greater than the amounts of Testing Services still to be performed, then Contractor shall reimburse the District as opposed to a credit related to such grant amounts exceeding the remaining Testing Services payment obligations of the District for Committed Amounts.

6. RIGHTS TO TEST RESULTS AND REPORTS. The rights to Test Results shall be the property of the District. For avoidance of doubt, all right, title, and interest in and to the Testing Services, Collection Kits, and Tests and any intellectual property developed by Contractor in furnishing the Testing Services to the District are and shall remain the property of Contractor. Subject to the terms and conditions of this Agreement, Contractor grants the District a non-transferable (except as permitted pursuant to Section 15), non-exclusive, world-wide, fully paid-up, royalty-free, license under Contractor's applicable intellectual property rights (excluding trademark rights) to the extent reasonably necessary for the District to (a) perform the District's designated responsibilities regarding the Testing Services as set forth in this Agreement and (b) use the Test Results furnished by Contractor on a perpetual basis for any lawful purpose. Subject to the terms and conditions of this Agreement, the District hereby grants the Contractor a non-transferable (except as permitted pursuant to Section 15), non-exclusive, world-wide, fully paid-up, royalty-free, license under any applicable intellectual property rights of the District to reproduce, use, make derivative works of, modify, display, transmit and distribute (x) Test Results as required by law; and (y) on a perpetual basis, any anonymized and aggregated data relating to the Testing Services, including based on any Test Results, for the purpose of providing the Testing Services to the District and for maintaining and improving Contractor's products and services.
7. CONFLICT OF INTEREST. Contractor agrees to comply with all applicable federal and state laws as well as all provisions of **Exhibit D**, attached hereto as and made apart hereof, pertaining to conflict of interest. Contractor shall comply with the District's Contractor Code of Conduct and hereby certifies on behalf of any Representatives (as defined in **Exhibit D**), as that term is defined in Contractor Code of Conduct, that there is no existing financial interest, whether direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement in violation of applicable laws or the District's Contractor Code of Conduct, and that none will be acquired. Further, Contractor certifies that Contractor will not knowingly subcontract with any persons having any such interests shall be subcontracted in connection with this Agreement or employed by Contractor.

Contractor understands that California law governs situations in which there exists or has existed a financial interest between a Contractor and a public official within a twelve (12)-month window leading up to a governmental decision. It does not matter whether the impact of an existing relationship is beneficial or detrimental to the interests of Contractor, its Representatives, or the public agency.

Contractor is also responsible for taking all the necessary steps to avoid even the appearance of impropriety or misrepresentation and has a duty to disclose to District any and all circumstances of which it is aware existing at such time which pose a potential conflict of interest, prior to entering into this Agreement. Further, Contractor has an ongoing obligation to proactively disclose any potential or actual conflict of interest of which it becomes aware through a "Meaningful Conflict Disclosure" to District and to fully cooperate in any inquiry to enable District to determine whether there is a conflict of interest and what resolution is necessary.

Failure to comply with any of these provisions shall constitute grounds for immediate termination of this Agreement, in addition to whatever other remedies the District may seek.

8. AUDIT AND INSPECTION OF RECORDS. Contractor shall maintain, and the District shall have the right upon at least five (5) business days' notice and during reasonable hours to have an independent auditor reasonably acceptable to Contractor periodically examine and audit, the books, records, documents, accounting procedures and practices and other evidence regardless of form (e.g., machine-readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient to properly reflect all costs claimed to have been incurred or anticipated to be incurred in performing this Agreement.

Contractor shall make said evidence (or to the extent accepted by the District, photographs, micro-photographs or other authentic reproductions thereof) available to the District at the District's or Contractor's offices (to be specified by the District) during all reasonable times. Said evidence/records shall be provided to the District within five (5) working days of a written request from the District. Contractor shall, at no cost to the District, furnish reasonable assistance for such examination/audit. Contractor shall keep and preserve all such records for a period of at least five (5) years from and after final payment or, if the Agreement is terminated in whole or in part, until five (5) years after the final agreement close-out. The District's rights under this Section shall also include access to Contractor's offices for the purpose of interviewing Contractor's employees.

Any information provided on machine-readable media shall be provided in a format accessible and readable by the District. All materials reviewed or obtained by the District in connection with this Section shall be and remain the Confidential Information (as hereinafter defined) of Contractor.

9. CONFIDENTIALITY.

- 9.1 Confidential Information (as hereinafter defined) which is received by either party or its authorized representatives (the "Receiving Party") from the other Party or its authorized representatives (the "Disclosing Party") shall be protected in accordance with this Section 9. "Confidential Information" shall include any and all technical, business, financial or other information, including third party information, furnished or disclosed, in whatever form or medium (including tangible, written, intangible, visual and oral and whether or not marked or identified as confidential), by the Disclosing Party to the

Receiving Party, including (i) information regarding patents and patent applications, copyrights, trade secrets and other intellectual property rights (including without of authorship, software programs, software source documents, algorithms, formulae, ideas, techniques, know-how, processes, inventions, apparatuses, equipment, models, sketches and drawings), (ii) product/service specifications and the existence of and information concerning the research, experimental work, development, design details and specifications of the party's (or third party's) proposed and/or future products, platforms, applications, and (iii) engineering information, manufacturing information, procurement requirements, purchasing information, customer lists, financial information, information regarding investors, employees, business and contractual relationships, business forecasts, sales and merchandising plans, marketing plans. For the avoidance of doubt, the pricing under this Agreement and any descriptions of Contractor's technology or proprietary processes shall remain the Confidential Information of Contractor. Except otherwise provided in this Agreement, without the prior consent of an authorized representative of the Disclosing Party, the Receiving Party shall neither divulge to, nor discuss with, any third party either the work and services provided hereunder, or any communication or information in connection with such services or work, except as required by law. As far in advance as is reasonably possible prior to any disclosure of such matters, whether as required by law or otherwise, the Receiving Party shall inform the Disclosing Party, in writing, of the nature and reasons for such disclosure and identify the content of such disclosure. The Receiving Party shall not use any communications or information obtained from the Disclosing Party for any purpose other than the performance of this Agreement, without the Disclosing Party's prior consent. The obligations of confidentiality contained in this Section will not apply to the extent that it can be established by the Receiving Party that the Confidential Information: (a) was already known to the Receiving Party, other than under an obligation of confidentiality, at the time of disclosure; (b) was generally available to the public or otherwise part of the public domain at the time of its disclosure; (c) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the Receiving Party; or (d) was developed independently by the Receiving Party without any use of the Disclosing Party's Confidential Information. Any restrictions on disclosure of data or reports will not apply to information that is required to be disclosed by a court, government agency or regulatory requirement.

- 9.2 The Receiving Party shall not be liable for disclosure or use of Confidential Information when such disclosure is required by court order law or similar government requirement, including California Public Records Act requests made under California Government Code § 6250, et seq., provided that the Receiving Party shall provide the Disclosing Party with prompt notice thereof, to the extent legally permitted.
- 9.3 At the conclusion of the performance of this Agreement, the Receiving Party shall return to the Disclosing Party all written materials constituting or incorporating any communications or information obtained from the Disclosing Party. Upon the Disclosing Party's specific approval, the Receiving Party may retain copies of such materials, subject to the requirements of Subsection 9.1.

- 9.4 Contractor may disclose to any subcontractor, or District approved third parties, any information otherwise subject to Subsection 9.1 that is reasonably required for the performance of the subcontractor's work under this Agreement. Prior to any such disclosure, Contractor shall obtain the subcontractor's written agreement to the requirements of Subsection 9.1 and shall provide a copy of such agreement to District. Contractor shall comply with all requirements and obligations under the California Consumer Privacy Act of 2018 (Cal. Civ. Code § 1798.100 et seq.), to the extent applicable.
- 9.5 Contractor represents that it shall not publish or cause to be disseminated through any press release, public statement, or marketing or selling effort any information which relates to this Agreement, nor shall Contractor make representations about the District in oral or written form without the prior approval of the District. The District shall be responsible, and Contractor shall have no liability, for any misrepresentations made by the District about Contractor or the Testing Services provided by Contractor.
- 9.6 Each party's obligation of confidence with respect to information submitted or disclosed to the other hereunder shall survive termination of this Agreement for a period of five (5) years.
- 9.7 Data Privacy; Data Usage. Subject to Contractor's compliance with this Section 9.7, the District may disclose personally identifiable information ("PII") and protected health information ("PHI") to Contractor to facilitate the performance of the Testing Services and to enable Contractor to comply with Contractor's applicable reporting requirements as described in the **Exhibits**. For purposes of this Agreement, such PHI, PII and the Test Results shall be referred to collectively as "District Data." Contractor shall, with respect to District Data, comply with all applicable data privacy and data protection laws, including the relevant provisions of the Health Insurance Portability and Accountability Act and its implementing regulations (45 C.F.R. Parts 160-164), and the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, and its implementing regulations, each as issued and amended by the Secretary (collectively "HIPAA"), and shall use, disclose, maintain, and transmit all District Data in accordance with the privacy standards and security safeguards that Contractor applies to PHI in accordance with HIPAA.
- 9.7.1 The District has obtained or will have obtained all necessary consents and authorizations prior to furnishing any data, including District Data, to Contractor.
- 9.7.2 To the extent that the District discloses to Contractor any District Data, Contractor shall:
- (a) Not disclose the District Data to any other party without the consent of the parent or eligible student, except as otherwise permitted under this Agreement or as required by law;
 - (b) Use the District Data for no purpose other than the work described in this Agreement;
 - (c) When using, disclosing or requesting District Data, Contractor shall make reasonable efforts to limit that District Data to the minimum necessary to

accomplish the intended purpose of the use, disclosure, or request, in accordance with HIPAA, as applicable;

- (d) Allow the District access to any relevant records for purposes of completing authorized audits, subject to the terms of Section 8 of this Agreement;
- (e) Mitigate, to the extent practicable, any harmful effect of a use or disclosure of District Data in violation of Contractor's policies and procedures, or the requirements of this Agreement or 45 C.F.R. Part 164, Subpart E, or a breach (as defined at 45 C.F.R. 164.402 (a "Breach")) of District Data;
- (f) Require all employees, contractors, and agents of any kind to comply with applicable provisions of HIPAA and other applicable federal and California laws with respect to any District Data shared under this Agreement;
- (g) Maintain all District Data obtained pursuant to this Agreement in a secure computer environment and not copy, reproduce, or transmit District Data obtained pursuant to this Agreement except as necessary to fulfill the purpose of this Agreement. Contractor shall use appropriate administrative, physical and technical safeguards to protect District Data and comply, where applicable, with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI. Upon reasonable advance notice, the District shall have the right, subject to reasonable confidentiality restrictions, to inspect and review security and/or privacy controls Contractor uses or intends to use with respect to District Data. All copies of District Data, including any modifications or additions to District Data from any source that contains information regarding students, are subject to the provisions of this Agreement in the same manner as the original District Data.
- (h) Report to the District without unreasonable delay and in no event more than forty eight (48) hours following any use or disclosure of District Data not permitted by this Agreement, including without limitation any security incident (as defined at 45 C.F.R. 164.302) involving electronic District Data and any Breach of District Data, provided that parties agree and acknowledge that notice shall not be required for attempted but unsuccessful security incidents, such as pings and other broadcast attacks on a firewall, port scans, denial of service attacks, unsuccessful log-in attempts, or interception of encrypted information where the key is not compromised, or any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of District Data;
- (i) Destroy or return all District Data obtained under this Agreement when it is no longer needed for the purpose for which it was obtained no later than thirty (30) calendar days after it is no longer needed, unless Contractor is otherwise required to retain such District Data under applicable laws. In the event Contractor destroys the District Data, Contractor shall provide the District with certification of such destruction within ten (10) business days of destruction; and
- (j) Contractor shall ensure that any subcontract entered into by Contractor and any third-party provider of data storage or transmission services in connection with

Contractor's performance of the Testing Services includes requirements that are no less stringent and comprehensive than those included in this Section.

- 9.7.3 Contractor is an operator of an Internet website, online service, online application, or mobile application. As such, to the extent that Contractor receives District Data from the District, Contractor shall comply with the requirements of California Business and Professions Code § 22584 and District policy, to the extent applicable.
- (a) Contractor shall not (i) knowingly engage in targeted advertising on Contractor's site, service or application to District students or their parents or legal guardians; (ii) use District Data to amass a profile about a District student; (iii) sell District Data; or (iv) disclose District Data without the District's permission, except as otherwise permitted under this Agreement.
 - (b) Contractor will store and process District Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Contractor's own data of a similar type. Without limiting the foregoing, Contractor warrants that electronic District Data will be encrypted in transmission using secure hypertext transfer protocol (HTTPS) with transport layer security (TLS) protocol version 1.2 to enable secure communications over the Internet, and encrypted at rest using no less than 128-bit AES algorithm with a truly random key.
 - (c) Contractor shall delete a student's District Data upon request of the District, provided that Contractor is not otherwise required under applicable laws to retain such District Data.
 - (d) District Data shall not be stored outside the United States without prior consent from the District.
10. EVALUATION. Contractor acknowledges that the presentation or services may be evaluated by the participants, the District's Office of Data and Accountability or any other District offices or schools and understands that the results of the evaluation may be subject to a Public Records Act request under California Government Code §6520, et seq. Contractor agrees to cooperate fully with any such evaluation and agrees to promptly furnish any information that is requested by the District for evaluation purposes.
11. EQUAL EMPLOYMENT OPPORTUNITY. It is the policy of the District that, in connection with all work performed under District agreements, there shall be no discrimination against any employee or applicant for employment because of race, color, religious creed, national origin, ancestry, marital status, sex, sexual orientation, age, disability or medical condition and therefore Contractor agrees to comply with applicable federal and state laws. In addition, Contractor agrees to require like compliance by all subcontractors employed on the work.
12. NON-DISCRIMINATION. The Los Angeles Unified School District is committed to providing a working and learning environment free from discrimination, harassment,

intimidation and/or bullying. The District prohibits discrimination, harassment, intimidation and/or bullying based on the actual or perceived characteristics set forth in California Penal Code §422.5, California Education Code §220 and actual or perceived sex, sexual orientation, gender, gender identity, gender expression, race or ethnicity, ethnic group identification, ancestry, nationality, national origin, religion, color, mental or physical disability, age, or on the basis of a person's association with a person or group with one or more of these actual or perceived characteristics, in any program or activity it conducts or to which it provides significant assistance.

13. REQUIRED GOVERNMENTAL AUTHORIZATIONS. As of the Effective Date, Contractor has not received an Emergency Use Authorization ("EUA") issued by the FDA for the Tests. The parties acknowledge that pursuant to FDA's Immediately in Effect Guidance for Clinical Laboratories, Commercial Manufacturers, and Food and Drug Administration Staff dated May 11, 2020 in effect as of the Effective Date (the "Testing Policy"), the FDA does not currently object to the initiation of COVID-19 testing by laboratories prior to FDA's issuance of an EUA for their tests provided that (i) the laboratory meets requirements under the Clinical Laboratory Improvement Amendments ("CLIA") administered by the Centers for Medicare & Medicaid Services ("CMS") to perform high-complexity testing, the test has been properly validated, and the laboratory gives notice of the validation to FDA (collectively, the "Pre-EUA Testing Criteria"), and (ii) such laboratory subsequently prepares and submits an EUA requesting authorization for the test within fifteen (15) days of the notification of validation to FDA. Contractor submitted an EUA request to the FDA for the Test (which, for the avoidance of doubt, includes associated Collection Kits) on August 7, 2020, seeking authorization from the FDA to market and perform the Tests based on the specifications, intended use, and conditions of use set forth in the Quality Specifications described in **Exhibit C**. From and after the Effective Date, Contractor shall use all reasonable efforts to submit and obtain such EUA for the Test from the FDA and shall provide LAUSD with copies of all correspondence obtained from the FDA pertaining to the status of Contractor's EUA request.
14. TERMINATION FOR DEFAULT.
 - 14.1 Either party may, upon thirty (30) days' notice to the other party, terminate this Agreement if the other party commits a material breach of any of its obligations hereunder and fails to cure such breach within such thirty (30) days from the date of such notice. Upon the effective date of such termination, breaching party shall immediately discontinue all services affected (unless the notice directs otherwise), except to the extent required by applicable law. Any inventory of Collection Kits then in the District's possession shall be returned to Contractor or destroyed, as the parties shall agree in good faith at the time, and Contractor shall refund the District for any Testing Services paid for by the District but not yet performed by Contractor.
 - 14.2 Upon a termination by the District due to Contractor's material breach of any of its obligations hereunder, the District's expense of completing the Testing Services, or any other costs or damages otherwise resulting from the failure of Contractor to fulfill its obligations, will be charged to Contractor and will be deducted by the District out of such

payments as may be due or may at any time thereafter become due to Contractor. If such costs and expenses are in excess of the sum which otherwise would have been payable to Contractor, then Contractor shall promptly pay the amount of such excess to the District upon notice of the excess so due.

- 14.3 If no EUA is granted for the Testing Services by January 1, 2021, the parties will discuss in good faith the status of the EUA submission and if either party determines, in its good faith reasonable judgment, that no EUA is likely to issue, or if the FDA finally rejects the EUA or if the FDA or other regulator orders the Testing Services to permanently cease, either party may terminate this Agreement by written notice and any pre-paid amounts for Testing Services not yet performed shall be refunded. Any inventory of Collection Kits then in the District's possession shall be returned to Contractor or destroyed, as the parties shall agree in good faith at the time.
- 14.4 The rights and remedies of the parties provided in this Section are in addition to any other rights and remedies provided under this Agreement as well as any and all remedies available at law or in equity.
15. ASSIGNMENTS. Neither the performance of this Agreement, the rights granted under this Agreement, nor any part thereof, may be assigned by either party without the prior consent and approval of the other, which consent and approval may be withheld in such party's sole and absolute discretion.
16. GOVERNING LAW AND VENUE. The validity, interpretation and performance of this Agreement shall be determined according to the laws of the State of California, without reference to its conflict of laws provisions. Venue for any court proceedings in connection herewith shall be in the state or federal courts located within the County of Los Angeles, California.
17. ENTIRE AGREEMENT/AMENDMENT. This Agreement and all **Exhibits** to this Agreement constitute the entire agreement between the parties to the Agreement as of the Effective Date and supersede any prior or contemporaneous written or oral understanding or agreement, and may be amended only by written amendment executed by both parties to this Agreement.
18. ORDER OF PRECEDENCE. In the event of any conflict in the definition or interpretation of any word, responsibility, service, schedule, or contents of a deliverable product between the provisions of the Agreement which precede the signature page and **Exhibits** to the Agreement, said conflict or inconsistency shall be resolved by giving precedence in the following order:
- (a) the provisions of the Agreement which precede the signature;
 - (b) **Exhibit D**; and
 - (c) additional **Exhibits** to this Agreement.

19. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY OR VOLUNTARY EXCLUSION. By signing this Agreement, Contractor certifies that:

- (a) Contractor and any of its principals and/or subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded for the award of contracts by any Federal agency, and
- (b) Have not, within a three-year period preceding this Agreement's effective date, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and are not presently indicted for, or otherwise criminally or civilly charged by a government entity with, commission of any of these offenses.

20. REPRESENTATIONS, WARRANTIES AND COVENANTS.

Notwithstanding any language to the contrary in this Agreement or any **Exhibit** to this Agreement, Contractor represents, warrants, and covenants to District as follows:

20.1 Compliance With Laws and Regulations.

- (a) At all times during the Term, Contractor shall, and shall cause all employees of Contractor to, comply in all material respects with all applicable laws, statutes, rules, regulations, directives, ordinances, and other pronouncements of any governmental or regulatory authority having legal effect, including the FDA ("Legal Requirements"), while performing the Testing Services and the fulfillment of any obligation of Contractor pursuant to this Agreement (collectively, the "Work"). Contractor agrees to comply with any future changes to Legal Requirements, including those of the FDA as appropriate.
- (b) Except as set forth in Section 13 or as may otherwise be required of the District under applicable law or this Agreement, Contractor has or will (i) hold all necessary approvals, clearances, authorizations, licenses, qualifications, certificates, or other permits of governmental authorities (collectively, "Permits") to offer Testing Services required to perform the Work, subject to Section 13, or (ii) will receive waivers from such requirements, including a CLIA certificate of registration from CMS and a Clinical and Public Health Laboratory License from the California Department of Public Health prior to initiating Testing Services. Contractor covenants that it will maintain all Permits, including the EUA once obtained, to perform the Testing Services contemplated by this Agreement. The parties agree that Contractor's submission of an EUA to the FDA seeking authorization of the Tests (following validation of the Tests and notification to the FDA in accordance with Section 13) shall constitute a Permit for purposes of Contractor's obligations under this Agreement, except to the extent that the FDA determines the Tests cannot be performed pursuant to its Testing Policy. Contractor shall ensure that all

subcontractors performing Work on its behalf under this Agreement are properly licensed to perform such work.

- (c) Contractor shall provide District with all reasonable assistance in complying with all applicable federal, state, and local laws and regulations to collect the samples.
- (d) Contractor, and to Contractor's knowledge, officers and directors, as applicable, subcontractors, and any person used by Contractor to perform the Testing Services under this Agreement: (i) have not been debarred and are not subject to a pending debarment pursuant to section 306 of the United States Food, Drug and Cosmetic Act, 21 U.S.C. § 335a; (ii) are not ineligible to participate in any federal and/or state healthcare programs or federal procurement or non-procurement programs; (iii) are not disqualified by any government or regulatory authorities from performing the Testing Services, and are not subject to a pending disqualification proceeding; and (iv) have not been convicted of a criminal offense related to the provision of healthcare items or services and are not subject to any such pending action. Contractor will notify LAUSD immediately if Contractor, or to Contractor's knowledge: (v) any of Contractor's subcontractors, any person used to perform Testing Services under this Agreement, or any of their respective officers or directors, as applicable, is subject to the foregoing, or (vi) if any action, suit, claim, investigation, or proceeding relating to the foregoing is pending or threatened.

20.2 Non-infringement.

The Testing Services (including the Collection Kits and the App) provided by Contractor shall not violate or infringe upon the rights of any third party, including any patent rights, copyright rights, trademark rights, trade secret rights, or other proprietary rights of any kind. Contractor holds good title or a valid license to use all property required to timely and fully perform its obligations relating to the Testing Services.

20.3 Timely Delivery; Capacity.

Contractor shall timely deliver the quantity of Collection Kits at times set forth on **Exhibit B**, and Contractor shall maintain the capacity to deliver the Committed Amount of Test Kits (and the Test Results of such Tests) to the District during the Term. Contractor shall deliver Test Results to the District in accordance with the SLAs specified in **Exhibit C**.

20.4 Accuracy of Testing.

The Test Results supplied by Contractor to the District shall substantially conform to the Quality Specifications in **Exhibit C** or such specifications as approved by the FDA in the EUA.

20.5 Authority.

Contractor is a Delaware limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware. Contractor is duly qualified to do

business and is in good standing in the State of California. Contractor has the power and authority to execute, deliver and perform this Agreement. The execution, delivery and performance by Contractor of this Agreement and the performance of Contractor's obligations hereunder have been duly and validly authorized by all necessary company action on the part of Contractor (none of which actions has been modified or rescinded, and all of which actions are in full force and effect) and do not and will not (a) conflict with or violate the certificate of formation, operating agreement, or other organizational documents of Contractor or any entity that holds a direct or indirect ownership interest in Contractor, or to Contractor's knowledge, any provision of law applicable to Contractor or any judgments binding upon Contractor, or (b) to Contractor's knowledge, conflict with or result in a breach of, constitute a default or require any consent under, or result in or require the acceleration of any indebtedness of Contractor under any agreement, instrument or indenture to which Contractor is a party or by which Contractor or its property may be bound or affected. This Agreement is a legal, valid, and binding obligation of Contractor, enforceable against Contractor in reorganization, arrangement, moratorium, or other similar laws affecting the rights of creditors generally.

20.6 No Claims.

There is no action, suit, proceeding, or material claim or investigation pending or threatened against Contractor in any court, or by or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, or before any arbitrator of any kind, that, if adversely determined, might adversely affect the Work or restrict Contractor's ability to complete the transactions contemplated by this Agreement, or restrict District's right to use the Work. Contractor knows of no basis for any such action, suit, claim, investigation, or proceeding.

20.7 Americans With Disabilities Act (ADA).

Contractor warrants that it complies with California and federal disabilities laws and regulations. (Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et. seq.). Contractor hereby warrants the products or services it will provide under this Contract comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services. Failure to comply with these requirements shall constitute a material breach of this Contract.

20.8 DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 20, CONTRACTOR HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND COVENANTS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. WITHOUT LIMITING THE FOREGOING, CONTRACTOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE.

21. CONFLICTS OF INTEREST. Entering into this Agreement shall not create a conflict of interest for the District or the Board of Education, or any elected official representing the District in negotiating this Agreement or any member of the Board of Education.
22. LIMITATION OF LIABILITY. EXCEPT FOR BREACHES OF CONFIDENTIALITY OBLIGATIONS, DATA PRIVACY OBLIGATIONS, LICENSE RESTRICTIONS, OR RELATING TO INFRINGEMENT UPON THE INTELLECTUAL PROPERTY RIGHTS OR OTHER PROPRIETARY RIGHTS OF ANY THIRD PARTY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER, OR TO ANY PERSON CLAIMING THROUGH OR UNDER THE OTHER, FOR ANY LOST PROFITS, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT, HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. SUBJECT TO THE LIMITATIONS SET FORTH IN THIS SECTION 22, CONTRACTOR SHALL BE LIABLE TO THE DISTRICT FOR ITS FAILURE TO PERFORM ANY AND ALL OF CONTRACTORS' OBLIGATIONS UNDER THIS AGREEMENT, AND THE DISTRICT SHALL HAVE ALL RIGHTS AND REMEDIES PROVIDED UNDER THIS AGREEMENT, AS WELL AS ANY AND ALL REMEDIES AVAILABLE AT LAW OR IN EQUITY.
23. INSURANCE.

Contractor shall, at his, her, or its sole cost and expense, maintain in full force and effect, during the Term, the following insurance coverage from a California licensed and/ or admitted insurer with an A minus (A-), VII, or better rating from A.M. Best, to cover any claims, damages, liabilities, costs and expenses (including legal counsel fees) arising out of or in connection with Contractor's fulfillment of any of its obligations under this Agreement or either party's use of the Work or any component or part thereof:

- (a) Commercial General Liability Insurance, including both bodily injury and property damage, with limits as follows:
- \$5,000,000 per occurrence
 - \$5,000,000 personal & adv. injury
 - \$5,000,000 general aggregate
 - \$5,000,000 products/completed operations aggregate
- (b) Business Auto Liability Insurance for owned, scheduled, non-owned or hired automobiles with a combined single limit of no less than \$1 million per occurrence. If no owned autos, then non-owned/hired coverage can be accepted.
- (c) Workers' Compensation and Employers Liability Insurance covering Contractor's full liability under the California Workers' Compensation Insurance and Safety Act and in accordance with applicable state and federal laws.

Part A – Statutory Limits

Part B – \$1,000,000/\$1,000,000/\$1,000,000 Employers Liability

Sole proprietors with no employees are exempt from providing Workers' Compensation and Employers Liability Insurance but must provide a signed Workers' Compensation Statement.

- (d) Errors & Omissions (Professional Liability) coverage not less than \$5,000,000 each claim and \$10,000,000 annual aggregate with any deductible not to exceed \$100,000 each claim. Such insurance shall be maintained in effect during the Term and for a period of five (5) years after the termination of this Agreement.
- (e) Excess/ Umbrella Liability Insurance coverage not less than \$10,000,000 follow form over General Liability.
- (f) Cyber Liability Insurance (Third Party Coverage) not less than \$1,000,000 per occurrence/ \$1,000,000 annual aggregate.
- (g) Any deductibles or Self-Insured Retentions (“SIR”) shall be declared in writing. An SIR or deductible above \$100,000 requires District approval.
- (h) Contractor, upon execution of this Agreement and periodically thereafter upon request, shall furnish the District with certificates of insurance evidencing such coverage. The Commercial General and Automobile Liability policies shall name the District and its Board of Education as additional insureds for both ongoing and completed operations, and products liability. Additional insured status shall be granted using the ISO Form CG 20 10 11 85 or equivalent. Contractor shall be required to provide the District with 30 days' prior notice if the insurance afforded by this policy shall be suspended, cancelled, reduced in coverage limits or non-renewed. Premiums on all insurance policies shall be paid by Contractor and shall be deemed included in Contractor's obligations under this Agreement at no additional charge.

24. SECURITY.

Notwithstanding any language to the contrary in this Agreement or any **Exhibit** to this Agreement, Contractor agrees that, if Contractor or its personnel, visit any of the District's facilities, Contractor and its personnel shall at all times comply with all security regulations in effect from time to time at District's premises and shall comply with District's security policies and procedures if granted access to District's computer or communications networks.

25. FINGERPRINTING.

If Contractor or its personnel, visit any of the District's facilities at any time during the Term, Contractor shall comply with the requirements of California Education Code § 45125.1, and perform the following acts:

- 25.1 Require all current and subsequent agents and employees of Contractor who may enter a school site during the time that pupils are present to submit their fingerprints in a manner authorized by the California Department of Justice (the “CADOJ”).
- 25.2 Prohibit agents and employees of Contractor from coming into contact with pupils until the CADOJ has ascertained that the individual has not been convicted of a felony as defined in California Education Code § 45122.1.
- 25.3 Certify in writing, using the District’s fingerprinting certification form (available at the District Risk Finance and Insurance Services website) to the District that neither Contractor nor any of Contractor’s agents or employees who may enter a school site during the time that pupils are present have been convicted of a felony as defined in California Education Code § 45122.1 and provide such certification to the District Risk Finance and Insurance Services.
- 25.4 Provide a list of the names of Contractor’s agents and employees who may have contact with pupils to the District Risk Finance and Insurance Services. This list shall be updated for Contractor staff changes and shall list agents and employees by appropriate school site.
- 25.5 The District may require Contractor and its agents and employees who may have contact with pupils to submit to additional background checks at the District’s sole and absolute discretion.
26. TUBERCULOSIS CLEARANCE. Contractor will prohibit any agent or employee of Contractor from entering a District school site until Contractor has submitted to a tuberculosis risk assessment. If tuberculosis testing is warranted, Contractor agent or employee shall not enter a school site until Contractor has received, for that agent or employee, the “certificate” described in California Education Code §49406(d), showing the agent or employee to be free from infectious tuberculosis and dated within the sixty (60) days prior to the agent’s or employee’s first entry onto a District school site and will require an updated “certificate” every four years thereafter while that employee is continuously employed by Contractor or that agent is continuously retained by, or otherwise represents, Contractor.
27. SEVERABILITY. If any section, provision, or portion of this Agreement is held to be invalid, illegal, or void by a court of proper jurisdiction, the remaining sections and provisions of this Agreement shall continue in full force and effect.
28. COMPLIANCE WITH ADDITIONAL FEDERAL REGULATIONS FOR FEDERALLY FUNDED CONTRACTS. Where applicable, this Agreement and performance under this Agreement shall comply with 2 CFR Part 200—Uniform Administrative Requirements.
29. FORCE MAJEURE.
 - 29.1 Force Majeure Rights. If (i) either party is prevented or delayed in the performance of any of its obligations under the Agreement due to the existence of a Force Majeure Event or (ii) District is prevented from conducting Tests at its schools and facilities due to the existence of a Force Majeure Event, such party shall give notice thereof to the other party

specifying the matters constituting Force Majeure Event together with such evidence as reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, and the party claiming Force Majeure Event shall be excused from the performance of such obligations as the case may be from the date of such notice for so long as such cause of prevention or delay shall continue. During the occurrence and continuation of a Force Majeure Event that results in the closure of LAUSD schools and facilities, upon notice from the District, Contractor shall not deliver Collection Kits for the duration of the Force Majeure Event. If a Force Majeure Event occurs, the District may seek to reduce its Committed Amount in accordance with the terms set forth in **Exhibit B**. Notwithstanding the foregoing, if the party claiming force majeure estimates, in such party's reasonable discretion, that the delay will exceed one hundred twenty (120) days, or if the delay has, in fact, exceeded one hundred twenty (120) days, then either party may terminate this Agreement for convenience.

- 29.2 Force Majeure Definition. The term "Force Majeure Event" shall include any cause affecting the performance by either party of this Agreement arising from or attributable to war (whether declared or not), armed conflict or the serious threat of the same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, extensive military mobilization; civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience; act of terrorism, sabotage or piracy; plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other student or employee restrictions that may be required by local, state or federal government or by the District in its reasonable discretion, stay at home orders or other governmental orders related to stay at home or opening or closing of schools; act of authority whether lawful or unlawful; compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization; act of God or natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought; explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current; general labor disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises; shortage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of the subject party. The term Force Majeure Event shall include a delay in reopening, or the closure of, LAUSD schools and/or facilities by the District due to any of the aforementioned occurrences, such delay or closure being in the District's sole and absolute discretion.
30. PUBLICITY. Subject to Section 9 of this Agreement, all decisions related to the media, press and other similar outlets will be decided by the District, and the District shall be the sole spokesperson relative to any publicity relative to Testing Services. Subject to Section 9 of this Agreement, the District may use the name of Contractor in any publicity material or statement related to the Testing Services, this Agreement, or its subject matter contained herein. Contractor shall not use or authorize others to use, the name, symbols, or marks of the District in any advertising or publicity material or make any form of representation or statement related to the Testing Services, this Agreement, or its subject

matter contained herein without the District's prior approval. The District shall be responsible, and Contractor shall have no liability, for any misrepresentations made by the District about Contractor or the Testing Services provided by Contractor.

31. COUNTERPARTS; ELECTRONIC SIGNATURES. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same agreement. However, this Agreement shall not be effective unless and until all counterpart signatures have been obtained. An unsigned draft of this Agreement shall not be considered an offer by either party. The words "execution", "signed" and "signature" and words of like import in this Agreement shall include images of manually executed signatures transmitted by facsimile or other electronic format (including ".pdf", ".tif" or ".jpg") and other electronic signatures (including DocuSign and AdobeSign). The use of electronic signatures and electronic records (including any contract or other record created, generated, sent, communicated, received or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper based recordkeeping system to the fullest extent permitted by applicable law, including the Electronic Signatures in Global and National Commerce Act, any state law based on the Uniform Electronic Transactions Act and the Uniform Commercial Code.
32. FURTHER ASSURANCES. Contractor shall do and perform (or shall cause to be done and performed) all such further acts and shall execute and deliver all such other agreements, certificates, instruments and documents as either party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the Testing Services contemplated hereunder.
33. SURVIVAL. The following sections shall survive any termination or expiration of this Agreement: 5.1, 5.2, 5.3, 5.4, 6, 8, 9, 16, 17, 18, 20.8, 22, 23(d), 27, 30, 31, 33, 34, 36, 38 and 39.
34. ATTORNEYS' FEES. If there is any legal action or proceeding between Contractor and the District arising from or based on this Agreement, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees and expenses, incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees and expenses shall be included in and as a part of such judgment.
35. NON-EXCLUSIVITY. For the avoidance of doubt, the District may purchase products that are the same as or similar to the Tests from sources other than Contractor. The District and Contractor acknowledge and agree that the arrangements set forth under this Agreement are non-exclusive and that, subject to the confidentiality requirements and other restrictions contained herein, the District shall be free at any time during the Term and thereafter to engage and enter into similar arrangements to provide Testing Services with third parties.

36. NON-WAIVER. No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.
37. TIME IS OF THE ESSENCE. Time is of the essence of this Agreement, as such, subject to timely performance of the District's obligations, Contractor will perform substantially in accordance with the timelines set forth in this Agreement and if Contractor fails to do so, Contractor will provide the service level credits and other terms set forth in the **Exhibits**. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which the period of time runs shall be excluded, and the last day of such period shall be included, unless it is not a business day, in which case the period shall be deemed to run until the end of the next day which is a business day.
38. TERMS GENERALLY. The defined terms in this Agreement shall apply equally to both the singular and the plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The term "person" includes individuals, corporations, partnerships, limited liability companies, trusts, other legal entities, organizations and associations, and any government or governmental agency or authority. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The words "approval," "consent", "request", "permission" and "notice" shall be deemed to be preceded by the word "written."
39. NOTICES. All notices to be given, payments to be made, or documents, samples, or other materials to be delivered by either party to the other pursuant to this Agreement will be sent by prepaid first class mail, by electronic mail, by fax, or hand-delivered, to the addresses set forth below. Any such notices, payments, documents, samples, or other materials will be deemed to have been given or delivered forty-eight (48) hours after posting, if sent by first class mail, when received, if sent by electronic mail or fax, or when delivered, if delivered by hand.

To Contractor: SummerBio LLC
751 Laurel St. #225
San Carlos, CA 94070
Attn: CEO

with a copy to: Latham & Watkins
140 Scott Dr.
Menlo Park, CA 94025
Attention: Jack Sheridan

To LAUSD: Los Angeles Unified School District
333 South Beaudry Avenue, #26-200
Los Angeles, CA 90017
Attn: David Hart

Chief Financial Officer

Phone: (213) 241-1885
Facsimile: (use email address)
Email: David.Hart1@lausd.net

with a copy to:

Los Angeles Unified School District
Office of the General Counsel
333 South Beaudry Avenue, 20th Floor
Los Angeles, CA 90017
Attention: Katrina M. Campbell
Chief Business & Compliance Counsel

Telephone: (213) 241-7600
Facsimile: (213) 241-3308
E-mail: katrina.campbell@lausd.net

with a copy to:

Pillsbury Winthrop Shaw Pittman LLP
725 S. Figueroa Street Suite 2800
Los Angeles, CA 90017
Attention: James M. Rishwain, Jr.

Telephone: (213) 488-7111
Facsimile: (213) 608-3737
Email: jrishwain@pillsburylaw.com

[Signature Page Follows]

Execution Version

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be duly executed as of the Effective Date.

LAUSD:

LOS ANGELES UNIFIED SCHOOL DISTRICT

David D. Hart

By: _____

Name: David Hart

Title: Chief Financial Officer

CONTRACTOR:

SUMMERBIO LLC,
a Delaware limited liability company

By: _____

Name:

Title

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be duly executed as of the Effective Date.

LAUSD:

LOS ANGELES UNIFIED SCHOOL DISTRICT
BOARD OF EDUCATION

By: _____
Name:
Title:

CONTRACTOR:

SUMMERBIO LLC,
a Delaware limited liability company


DocuSigned by:
By:  _____
Name: Guido Baechler
Title: CEO

Exhibit A

STATEMENT OF WORK

1. THE SERVICES

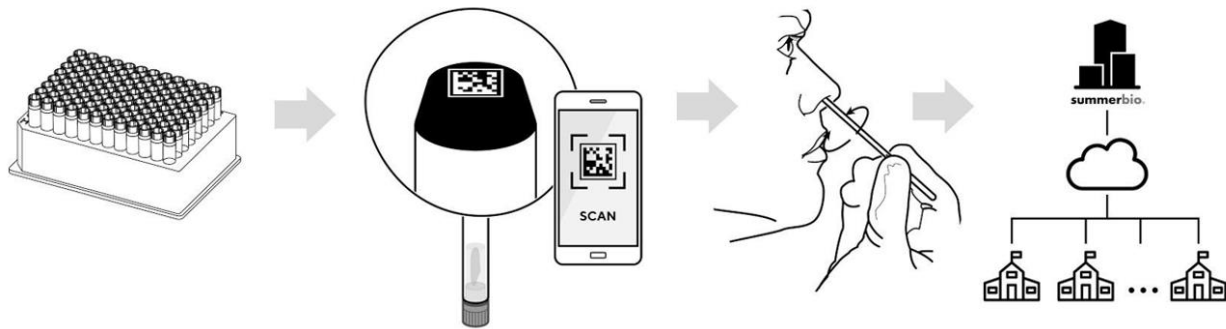


Figure 1: Sampling flow with bulk Contractor Collection Kits

Each sample tube is etched with a unique barcode. As tests are completed, results will be automatically transmitted to the District, where coded results will be associated by the District to individuals according to its own policies.

1.1 Collection Kits for Sample Collection

The Collection Kit includes a standard nasal mid-turbinate flocked swab and a screw cap tube with a barcode. The tube is filled with RNA Shield as a transport medium. After sample collection, the tube is returned to a local collection center for transfer to the lab.

Collection Kits will be provided in bulk to the District. The District will handle storage of Collection Kits, distribution of Collection Kit materials, sample collection and storage at its sites, and consolidation and delivery of aggregated 96-place racks back to drop locations specified in 1.5 below (or such other drop locations as may otherwise be mutually agreed upon) for transport and processing.

1.2 Mobile Application

The District shall be solely responsible for ensuring that Sample Collectors (as hereinafter defined) have a reliable, appropriate system for collecting and transmitting the required information during the test process.

Such information will be transferred to Contractor via Secure File Transfer Protocol ("SFTP") within two hours of sample collection. The required information includes:

- A unique identifier (e.g. student ID) that can be used by Contractor to look up associated demographics for reporting purposes in a demographic file transmitted nightly to Contractor by District via SFTP.
- The identifier of the sample tube used for collection, read by scanning one of the two same-valued barcodes on the tube during collection.
- Answers to all required “Ask on Entry” questions mandated by the CDC (see <https://www.cdc.gov/coronavirus/2019-ncov/lab/reporting-lab-data.html>)

1.3 Proposed workflow:

Terminology:

“Sample Collector” means an individual designated by the District who collects samples from Test Subjects.

1. Sample Collection

After logging into the App, the Sample Collector:

- Ascertains identity of the Test Subject in accordance with District policies and procedures, e.g. by checking ID,
- Selects the Test Subject (the “Subject ID”) in the App with option to enter name manually and/or take picture,
- Enters any missing required information required by applicable law, such as CARES Act section 18115,
- Scans the barcoded Sample ID on the sample tube from the Collection Kit into the App,
- Collects the sample, secures the sample into the Sample Tube, places a yellow cap on the tube and adds it to a rack for delivery to the lab, and
- Repeats (1)-(5) for each additional Test Subject.
- At completion of sample gathering, the Subject IDs associated Sample IDs, and answers to any supplemental questions will be transmitted to the Contractor in an agreed-upon manner, e.g. SFTP of a .csv file.

2. Samples are sent to Contractor for processing

3. Delivery of Results

As samples are processed, Contractor will send Subject IDs and associated Test Results to the District.

4. District to Provide Required Information For Reporting Purposes

In accordance with Section 9.7 of the Agreement, the District will provide all information required by Contractor to satisfy its regulatory reporting obligations under applicable laws (e.g., CARES Act Section 18115).

5. Regulatory Reporting

Contractor will report all Test Results and all required associated information (e.g. Test Subject demographics) to state and local regulatory authorities in accordance with their published requirements for laboratory reporting, e.g. CARES Act Section 18115.

1.4 Airport Delivery

Each day, the District will deliver the completed racks packaged in boxes in accordance with the Quality Specifications in **Exhibit C** as follows: (a) at least fifty percent (50%) of filled racks will be delivered by the District to the Van Nuys airport for pick up by 10:00 am local time. The remainder will be dropped off by the District no later than 2:00 pm local time at Hawthorne airport. Assuming the District meets the drop off times, Contractor will complete processing and Test Result delivery by 5:00 am local time the following day. Notwithstanding the foregoing, if the District returns Collection Kits to any drop-off location after the cut-off time, Contractor shall nonetheless use commercially reasonable efforts to deliver the Test Results to the District by 5:00 am local time the following day.

1.5 Support

The District will provide all “front line” or Tier 1 Support to Test Subjects and Sample Collectors. Contractor will provide reasonable assistance or Tier 2 Support to the District with respect to all inquiries from Test Subjects and Sample Collectors or related to individual Test Results, including a method for the District to access individual Test Result details.

All requests for Tier 2 support and communication of complaints shall be provided to Contractor in the following manner:

Head of Support

(650) 980-8333

support@summer.bio

2. IMPLEMENTATION PHASE AND IMPLEMENTATION PLAN

The implementation plan for the initial implementation phase is attached to this Statement of Work as Annex 1.

3. TESTING SERVICES RAMP UP PHASE.

From the conclusion of the Implementation Phase, the parties will begin the Testing Services phase, recognizing that initially fewer Collection Kits will be provided and processed than when steady-state Testing Services operations are ongoing. The parties intend that this ramp up phase will begin by August 17, 2020 and conclude four weeks thereafter (the “Ramp Up Phase”).

4. STEADY STATE TESTING SERVICES PHASE.

Upon conclusion of the Ramp Up Phase, the parties will engage in the Testing Services in accordance with the delivery schedule set forth in **Exhibit B** and the service level terms set forth in **Exhibit C**.

Annex 1 to Exhibit A

Implementation Plan

Los Angeles Unified School District

IMPLEMENTATION PHASE & IMPLEMENTATION PLAN

Version 2.0
08/6/2020

1. INTRODUCTION

This document will outline the planning and work necessary for the Implementation Phase and the Implementation Plan.

2. IMPLEMENTATION OVERVIEW

The Implementation Phase will focus on systems integration, testing and modifications necessary for full implementation of testing services. Initial testing results during the “**dry-run phase**” of implementation, which shall include up to 1,000 Tests, will be for trial analysis only and will not be used by either party for diagnostic purposes relating to any test subject. Each party will have roles and responsibilities in each of the following areas:

- Systems Integration
- Mobile application
- Testing the systems and mobile application
- Making modifications
- Reporting

The Implementation Plan will focus on testing services and coordinated planning and work required for program rollout. Each party will have roles and responsibilities in each of the following areas:

- Training & Education (Collection of the samples, app, package the collection kits, results/reporting)
- Delivery of Collection Kits
- Collection Kit Ordering, Shipment, Receiving, Warehouse and Storage
- Distribution of Collection Kits to testing locations
- Sample collection
- Return of Collection Kits
- Delivery of Test Results

2.1 Points of Contact

Need to establish appropriate key personnel responsible for implementation plan (TBD).

Table 2.1: Points of Contact (TBD)

Role	SummerBio	Contact Number	LAUSD	Contact Number
Program Management	████████	████████ ████████	David Hart	213-241-1885 David.Hart1@lausd.net
IT Integration	████████	████████ ████████	Themy Sparangis	████████ themy.sparangis@lausd.net
Logistics	████████	████████ ████████	Jill Barnes	████████ jill.barnes@lausd.net
Warehouse	████████	████████ ████████	Marc Monforte	████████ Marc.monforte@lausd.net

2.2 Implementation Phase

Systems Integration, testing and modification plan

SummerBio will coordinate with LAUSD on key systems integration methodologies, set-up, testing, and modifications necessary based on testing and feedback provided.

Task	SummerBio Role	LAUSD Role
Transmit test subject ID, answers to CDC-mandated questions, and collection tube ID to lab.	Provide a SFTP server to receive subject, question, and sample collection data from the District in comma separated value (CSV) format.	Configure LAUSD SFTP server to send these required data from collection app to SummerBio within two hours of collection.
Transfer all demographic data needed for regulatory reporting	Provide a SFTP server to receive demographic data from the District in comma separated value (CSV) format.	Extract, transform, and load changes in data nightly to provided SFTP site.
Reporting	Report all test results with required demographics to state and local agencies (e.g. CalREDIE).	Ensure ETL export of test subject demographics and upload of data from collection includes all data required for regulatory reporting.

District integration	Provide assistance to LAUSD systems integration.	Provide key IT points-of-contact for communication and coordination of implementation phase.
End-to-End Testing	Coordinate with LAUSD on dry-run testing.	Provide key personnel to assist with dry-run, end-to-end testing.

2.3 Implementation Plan

Training & Education

A comprehensive training & education plan will be established to provide instruction on donor identification, procedures for sample collection, using the mobile application, scanning samples, organizing, and boxing collection samples for pick-up and reporting. SummerBio will establish a “train-the-trainer” model. Once designated LAUSD staff and HCPs are trained, they will provide in-person training to others throughout the District as needed. Throughout the Term, SummerBio will provide remote training via Zoom to all those designated by LAUSD Implementation team. Training will be ongoing and sustained as needed.

Task	SummerBio Role	LAUSD Role
Training & Education	Coordinate with LAUSD and set up a schedule (dates/times) for remote training.	Identify list of HCPs to participate in remote training.
Remote Training Schedule	<p>Provide remote training and instruction to lead members of LAUSD HCP sample collection team.</p> <p>HCP (train the trainer) instruction will be provided in several key areas:</p> <ul style="list-style-type: none"> ● PPE/Safety ● Sample collection ● Mobile App (to be provided by Microsoft as contractor to the District) ● Scanning collection tubes ● Organizing and boxing collection tubes for pick-up 	Coordinate with SummerBio on dates/times and participants for remote training.

Reporting & Results	Instruction & training will be provided to those that will have access to reports and results.	Provide a list of LAUSD staff that will require training on reporting.
Training materials & videos	Distribute electronic training materials to LAUSD to be used for training sessions and reference. SummerBio to post training materials and videos website.	Provide main contact or list of contacts that will require training materials and videos.
Ongoing Support & Training	Provide ongoing support for questions and additional training and instruction	Coordinate with LAUSD on setting up daily/weekly training & education meeting

Collection Kit Assembly

Coordinate with LAUSD Implementation team on the specific configuration & quantities of the bulk Collection Kit components.

Task	SummerBio Role	LAUSD Role
Confirm quantities and configuration of bulk Collection Kit components	Package the bulk Collection Kit components in the agreed upon configuration and quantities in accordance with Exhibit C .	Coordinate with SummerBio on configuration of sub-component quantities.

Delivery of Collection Kits, Receiving, Warehouse & Storage

Establish a kit ordering process that will encompass the exact dates and timing of shipments from SummerBio to LAUSD.

Task	SummerBio Role	LAUSD Role
Create Collection Kit ordering process	Coordinate with LAUSD on kit ordering process (timing and schedule based on agreed number of Collection Kits needed weekly).	Establish a kit ordering process (timing and quantities).
Shipping & Receiving	Coordinate with LAUSD to	Provide delivery address at

Schedule	create a shipping schedule with dates/quantities per contract.	the designated centralized location.
Receiving shipments	Provide shipment tracking information.	Provide a point of contact at the warehouse.
Warehouse and Storage	Provide Collection Kit storage guidelines.	Ensure storage of Collection Kits meet specifications required.

Distribution of Collection Kits to testing locations

LAUSD will distribute Collection Kit materials from their centralized location to locations designated to receive SummerBio COVID-19 testing.

Task	SummerBio Role	LAUSD Role
Distribution of Collection Kits from LAUSD centralized location to designated locations	Assist LAUSD in planning as needed.	Select locations designated for SummerBio testing and create plan for quantities needed, with delivery dates. Deliver Collection Kit components to each testing location.

Sample Collection

A comprehensive testing plan will need to be established at schools and other designated testing locations designated to receive SummerBio testing. Testing protocol, location & time of testing, and setting up a collection drop-off site in each testing location will be required. SummerBio will assist the LAUSD Implementation team with guidance and suggestions as needed.

Task	SummerBio Role	LAUSD Role
Create the testing plan for each testing locations	Be available for ongoing questions, concerns, guidance related to testing and implementation of plan.	Determine the locations that are designated for SummerBio testing.
Prepare for quantities of tests needed each week		Determine the quantity of tests needed for students & faculty at each test location.

Organization and prep at each testing location		Testing team to organize testing supplies, testing protocol, PPE, and other safety measures.
Testing schedule		Create testing schedule/time/location and protocol in each location.
Collection Drop-off and Collection Area		Set-up a drop-off and collection site at each testing locations.
Organizing and boxing collection tubes (prep for pick-up)		Determine protocol for packaging completed samples (96-place racks, plastic biohazard bags and shipping box) to have them ready for pick-up.
Return of Collection Kits		Organize the sample pick-up schedule for each location and timing to take samples from the testing locations to the airport.

Return of Collection Kits

Collection Kits will need to be properly packaged and delivered to two (2) drop off locations.

Task	SummerBio Role	LAUSD Role
Pick-up Collection Kits from designated testing locations		Establish a sample collection pick-up protocol with timing and locations for the drivers.
Transport Collection Kits to SummerBio drop-off locations	SummerBio staff will be on hand to receive delivery and to load boxes onto transport.	Deliver packaged collection racks with samples to return-delivery point and meet SummerBio contact person.

Delivery of Test Results

SummerBio will receive delivery of LAUSD samples daily and will prepare, process and report Test Results per established reporting protocol.

Task	SummerBio Role	LAUSD Role
Delivery of Test Results	Deliver electronic Test Results by specified agreed upon time.	Provide Test Results to Test Subjects using the Microsoft Portal.

Exhibit B

CONTRACT PRICE AND DELIVERY SCHEDULE

Summary

- The District commits to pre-purchase capacity for the full 2020-2021 school year on a take-or-pay basis, paid four (4) weeks at a time, sixty (60) days in advance.
- Contractor will ensure the District has at least two (2) weeks of capacity of Collection Kits in inventory on hand, provided that during the ramp-up phase this number may be approximately three (3) days of Collection Kit capacity in inventory.
- The total Contract Price and Delivery Schedule of this **Exhibit** will be updated by mutual agreement of the parties at such time as Contractor has the capacity and the District exercises its option to increase its purchase commitment to the anticipated level of 200,000 Tests per week.

Option to reserve additional capacity for 2020-2021 school year at a rate of \$10/Test or the then-current per Test price, whichever is higher.

- Each option can be exercised at any time before the end of calendar year 2020 and upon election by the District to commit to purchase such blocked capacity for the rest of the school year, the Committed Amount shall be increased, and Contractor shall enable such capacity to process the additional Collection Kits and continue delivering Test Results in accordance with the SLAs set forth in **Exhibit C** and increase its provision of Collection Kits accordingly.
- The District may provide notice to reserve capacity for 20,000 additional Tests per day on no less than six (6) weeks prior notice, and based on such lead time, Contractor will provide Collection Kit inventory and processing capacity accordingly.
- The District may reserve capacity for 20,000 additional Tests per day on no less than eight (8) weeks prior notice, and based on such lead time, Contractor will provide Collection Kit inventory and processing capacity accordingly.
- After the first two (2) options have been exercised, each additional increase in capacity of 20,000 will be subject to an incremental two (2) weeks of lead time required for prior notice (e.g., ten (10) weeks, twelve (12) weeks, etc.)

Credits in the event the Testing Services are not utilized.

- In the event that the District gives Contractor at least two (2) weeks' notice that, due to a Force Majeure Event, the District will not utilize the full Committed Amount and would like to decrease the District's Committed Amount (the "Surrendered Capacity"), Contractor agrees to use all commercially reasonable efforts to substitute alternate customers for the Surrendered Capacity. If Contractor, using commercially reasonable efforts, is able to reallocate some or all of the Surrendered Capacity to an alternative purchaser: (i) the District will return excess Collection Kits to Contractor; (ii) the District will have its Committed Amount reduced by the Surrendered Capacity actually resold by Contractor; and (iii) net of all Contractor reasonable reallocation costs, Contractor will credit the next payment made by the District to Contractor equal to the amount of fees charged to the District for the Surrendered Capacity that Contractor has

been able to reallocate to other customers. For the avoidance of doubt, that portion of the Committed Amount allocated during the notice period shall not be considered Surrendered Capacity.

Credits for damaged, missing, or non-conforming Collection Kits.

- In the event that Contractor (A) (i) fails to deliver any Collection Kit in accordance with the delivery schedule set forth on **Exhibit B**, (ii) delivers Non-Conforming Collection Kits, or (iii) otherwise delivers damaged Collection Kits to the District, and (B) such missing, damaged or Non-Conforming Collection Kits are not timely replaced such that the District is prevented from collecting samples in accordance with the Committed Amounts, then the District shall receive a credit equal to the amount of fees charged for those damaged, missing or Non-Conforming Test Kits against the next payment made by the District to Contractor for each missing, delayed, damaged, or non-conforming Collection Kit.

SLA Credits.

- In the event that Contractor fails to meet the specified SLAs set forth in **Exhibit C**, the District shall receive a credit against the next payment made by the District to Contractor for each Test Result provided outside the SLA set forth in **Exhibit C**. For example, if the SLA specifies that 80% of the Collection Kits returned to Contractor by the District in accordance with this Agreement over a two week period will be processed by 5 a.m. the next day, but only 70% of such Collection Kits delivered over the two week period is processed by the deadline, then the District shall receive a credit equal to the amount of fees charged for those Test Results that were not provided within the applicable SLA (10% of such Collection Kits delivered over a two week period).
- Contractor will process all Collection Kits delivered to the Contractor by the District, regardless of whether such processing occurs outside of the stated SLA, and Contractor shall use reasonable commercial efforts to deliver the Test Results by 5 a.m. the next day.

Contract Price

Total Contract Price: \$51,309,940

*The total contract price is subject to change if the Committed Amount increases following the District's exercise of one or more options set forth in this **Exhibit B**.

<u>Set Up Fee and first Committed Amount Payment Payable upon completion of the Dry-Run Testing at the end of Week 2 in the table below</u>	<u>\$3,720,000</u>
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Price Per Test Result

<u>Test Results Delivered</u>	<u>Price per Test Result</u>
0-475,000	\$20
475,001-800,000	\$14
800,001-1,200,000	\$13
1,200,001-1,600,000	\$12
1,600,001-2,000,000	\$11
2,000,001 and thereafter	\$10

Delivery Schedule

Week Beginning	Weekly Kits Delivered	Weekly Tests Completed	Daily Tests	Cumulative Tests	Average Price Per Test	Test Payment	Milestone Payment	Total Payment	Comments
8/3/2020					\$20.00				
8/10/2020	1,000				\$20.00				
8/17/2020	30,000	1,000	200	1,000	\$20.00	\$1,720,000	\$2,000,000	\$3,720,000	Setup payment after completion of 1,000 test dry run. During ramp, shipping kits 1 week in advance of testing; payment for tests in August
8/24/2020	55,000	30,000	6,000	31,000	\$20.00				
8/31/2020	100,000	55,000	11,000	86,000	\$20.00				
9/7/2020	200,000	100,000	20,000	186,000	\$20.00	\$13,447,973		\$13,447,973	Change from shipping kits 1 week in advance of testing, to shipping 2 weeks in advance; payment for tests to be completed in Sept/Oct
9/14/2020	100,000	100,000	20,000	286,000	\$20.00				
9/21/2020	100,000	100,000	20,000	386,000	\$20.00				
9/28/2020	100,000	100,000	20,000	486,000	\$19.34				Transition from \$20/test to \$14/test
10/5/2020	100,000	100,000	20,000	586,000	\$14.00	\$6,313,988		\$6,313,988	Payment for tests completed in November
10/12/2020	100,000	100,000	20,000	686,000	\$14.00				

Week Beginning	Weekly Kits Delivered	Weekly Tests Completed	Daily Tests	Cumulative Tests	Average Price Per Test	Test Payment	Milestone Payment	Total Payment	Comments
10/19/2020	100,000	100,000	20,000	786,000	\$14.00				
10/26/2020	100,000	100,000	20,000	886,000	\$13.14				Transition from \$14/test to \$13/test
11/2/2020	100,000	100,000	20,000	986,000	\$13.00	\$4,613,989		\$4,613,989	Payment for tests completed in December
11/9/2020	100,000	100,000	20,000	1,086,000	\$13.00				
11/16/2020	100,000	100,000	20,000	1,186,000	\$13.00				
11/23/2020	100,000	100,000	20,000	1,286,000	\$12.14				Transition from \$13/test to \$12/test
11/30/2020	100,000	100,000	20,000	1,386,000	\$12.00				
12/7/2020	100,000	100,000	20,000	1,486,000	\$12.00	\$4,213,990		\$4,213,990	
12/14/2020	100,000	100,000	20,000	1,586,000	\$12.00				
12/21/2020	100,000	100,000	20,000	1,686,000	\$11.14				Transition from \$12/test to \$11/test
12/28/2020	100,000	100,000	20,000	1,786,000	\$11.00				
1/4/2021	100,000	100,000	20,000	1,886,000	\$11.00	\$4,000,000		\$4,000,000	Payment for tests completed in February
1/11/2021	100,000	100,000	20,000	1,986,000	\$11.00				
1/18/2021	100,000	100,000	20,000	2,086,000	\$10.14				Payment for tests completed in January, transition from \$11/test to \$10/test
1/25/2021	100,000	100,000	20,000	2,186,000	\$10.00				
2/1/2021	100,000	100,000	20,000	2,286,000	\$10.00	\$5,000,000		\$5,000,000	Payment for tests completed in March
2/8/2021	100,000	100,000	20,000	2,386,000	\$10.00				
2/15/2021	100,000	100,000	20,000	2,486,000	\$10.00				
2/22/2021	100,000	100,000	20,000	2,586,000	\$10.00				
3/1/2021	100,000	100,000	20,000	2,686,000	\$10.00	\$4,000,000		\$4,000,000	Payment for tests completed in April
3/8/2021	100,000	100,000	20,000	2,786,000	\$10.00				
3/15/2021	100,000	100,000	20,000	2,886,000	\$10.00				
3/22/2021	100,000	100,000	20,000	2,986,000	\$10.00				
3/29/2021	100,000	100,000	20,000	3,086,000	\$10.00				
4/5/2021	100,000	100,000	20,000	3,186,000	\$10.00	\$6,000,000		\$6,000,000	Payment for tests completed in May and June
4/12/2021	100,000	100,000	20,000	3,286,000	\$10.00				

Week Beginning	Weekly Kits Delivered	Weekly Tests Completed	Daily Tests	Cumulative Tests	Average Price Per Test	Test Payment	Milestone Payment	Total Payment	Comments
4/19/2021	100,000	100,000	20,000	3,386,000	\$10.00				
4/26/2021	100,000	100,000	20,000	3,486,000	\$10.00				
5/3/2021	100,000	100,000	20,000	3,586,000	\$10.00				
5/10/2021	100,000	100,000	20,000	3,686,000	\$10.00				
5/17/2021	100,000	100,000	20,000	3,786,000	\$10.00				
5/24/2021	100,000	100,000	20,000	3,886,000	\$10.00				
5/31/2021	-	100,000	20,000	3,986,000	\$10.00				
6/7/2021	-	100,000	20,000	4,086,000	\$10.00				
Total	4,086,000	4,086,000				\$49,309,940	\$2,000,000	\$51,309,940	
Average price						\$12.07			

Collection Kits processed by the Contractor in excess of the Committed Amounts allocated for a given day: (i) shall be processed at the applicable average price per Test set forth above; (ii) shall not be included in the aggregate total of Collection Kits for the purposes of the bulk discount; and (iii) shall not be subject to the SLAs set forth in **Exhibit C**. Contractor shall use commercially reasonable efforts to process such Collection Kits in a timely manner and to replenish the Collection Kits available to the District. Future shortages caused by the District's usage of Collection Kits above the Committed Amounts (as the same may be increased pursuant to the District exercising its options set forth in this **Exhibit B**) will not count against Contractor for the impacted weeks until Collection Kits can be fully replenished in the ordinary course.

Exhibit C

QUALITY SPECIFICATIONS

Collection Kit Specifications.

The Collection Kits do not require refrigeration, and any lack of refrigeration by the District or Contractor when storing or transporting Collection Kits will not negatively impact timely deliver or accuracy of Test Results by Contractor. The District agrees to store the Collection Kits in facilities with temperature ranges between 18 and 30 degrees Celsius.

Sample Collection Specifications.

As determined by validation data, or as otherwise specified by the FDA in the approved EUA.

Test Accuracy.

As determined by validation data, or as otherwise specified by the FDA in the approved EUA.

Test Intended Use and Conditions of Use.

Contractor anticipates the following limitations on the intended use and conditions of use for the Tests as proposed to be authorized in the EUA: (i) Tests are to be intended for use in the qualitative detection of nucleic acid from SARS-CoV-2 in nasopharyngeal, nasal, oropharyngeal, and mid-turbinate specimens from individuals suspected of COVID-19 by a healthcare provider, and (ii) collection of samples for testing may only be performed by a healthcare professional who is authorized or otherwise permitted under applicable law or guidance of a government authority to collect the specimens necessary for Contractor to perform Testing or alternatively, in the case of a nasal mid-turbinate specimen using a flocked tapered swab or anterior nares specimen using a flocked swab, round foam swab, or spun fiber swab, by onsite self-collection at designated collection sites supervised by such health care professionals, and in any case may not be done by (a) self-collection at home, with or without the use of telemedicine; or (b) self-collection onsite at a collection site not supervised by HCPs; provided that the final intended use and conditions of use shall be further limited (or broadened) to the extent specified in the EUA as approved by the FDA or as otherwise permitted by the FDA.

Service Level Agreements (SLAs)

Week	Service Level Agreement	Remedy
Ramp Up Phase	Test Results delivered by 5 a.m. the next day for 60% of the Collection Kits returned to Contractor by the District, measured against the prior rolling two weeks. *	SLA Credits as set forth in Exhibit B

After the Ramp Up Phase	Test Results delivered by 5 a.m. the next day for 80% of the Collection Kits returned to Contractor by the District, measured against the prior rolling two weeks. *	SLA Credits as set forth in Exhibit B
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* On any day during the Term, the District may return Collection Kits to Contractor, in excess of the Committed Amount allocated for such day; provided, however, the SLAs shall only apply to the Committed Amount allocated for the applicable day. For example, if the District returns 30,000 Collection Kits to Contractor on Monday, April 12, 2021, then (assuming no additional capacity option has been exercised by the District and Contractor has maintained 80% SLAs over the prior two weeks) Contractor shall only be required under the SLAs to provide the District with 16,000 Test Results by 5 a.m. on Tuesday, April 13 (*i.e.*, 80% of the 20,000 Committed Amount applicable to that day), and, for avoidance of doubt, the District shall not receive any credit for the additional 10,000 Collection Kits returned in excess of the daily Committed Amount. Contractor shall nonetheless use commercially reasonable efforts to deliver any additional Test Results to the District by 5:00 am local time the following day. A Collection Kit shall not be considered a returned Collection Kit for the purposes of calculating SLAs or credits if: (i) the contents of such Collection Kit are empty; (ii) the Collection Kit does not contain any sample material; or (iii) the Collection Kit was not scanned properly.

Contractor acknowledges that if it fails to comply with the quality specifications set forth in this **Exhibit C** or fails to consistently meet its Test Result delivery timeliness obligations, such failures shall constitute material breaches of the Agreement.

Exhibit D

LAUSD'S CONTRACTOR CODE OF CONDUCT



LAUSD Ethics Office

Ask Ethics: (213) 241-3330

<https://achieve.lausd.net/ethics>

Building Trust

Inside and Out

LOS ANGELES UNIFIED SCHOOL DISTRICT

Contractor Code of Conduct

Adopted: 12/00; Revised: 11/02, 11/06

Preamble

Los Angeles Unified School District's Contractor Code of Conduct was adopted to enhance public trust and confidence in the integrity of LAUSD's decision-making process. This Code is premised on three concepts:

- *Ethical and responsible use of scarce public tax dollars is a critical underpinning of effective government*
- *Contracting integrity and quality of service are the shared responsibilities of LAUSD and our Contractors*
- *Proactive and transparent management of potential ethics concerns improves public confidence*

This Code sets forth the ethical standards and requirements that all Contractors and their Representatives shall adhere to in their dealings with or on behalf of LAUSD. Failure to meet these standards could result in sanctions including, but not limited to, voidance of current or future contracts.

1. Contractors

All LAUSD Contractors and their Representatives are expected to conduct any and all business affiliated with LAUSD in an ethical and responsible manner that fosters integrity and public confidence. A "Contractor" is any individual, organization, corporation, sole proprietorship, partnership, nonprofit, joint venture, association, or any combination thereof that is pursuing or conducting business with and/or on behalf of LAUSD, including, without limitation, consultants, suppliers, manufacturers, and any other vendors, bidders or proposers. A Contractor's "Representative" is also broadly defined to include any subcontractors, employees, agents, or anyone else who acts on a Contractor's behalf.

2. Mission Support

LAUSD relies on Contractors and their Representatives to support our LAUSD mission statement of "*educating students to a higher level of achievement that will enable them to be responsible individuals and productive members of the greater society.*" Contractors and their Representatives must provide high-value products, services and expertise which advance LAUSD's mission or provide mission-related benefits that support our goals for the students, employees, stakeholders, and the communities we serve.

3. Ethical Responsibilities

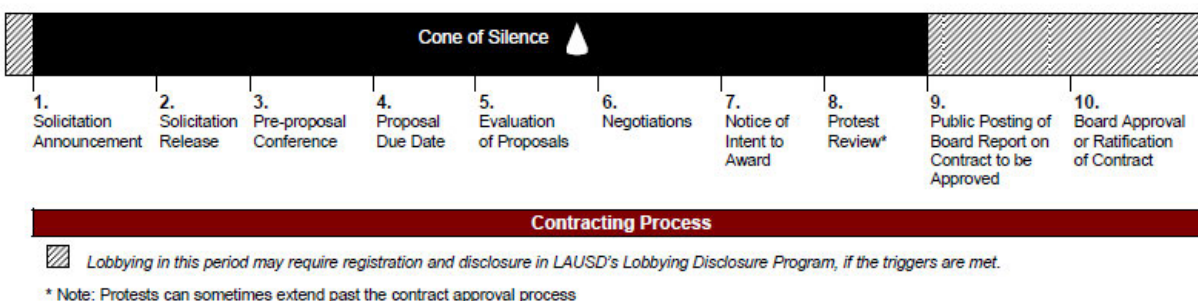
All LAUSD contracts must be developed and maintained within an ethical framework. LAUSD seeks to promote public trust and confidence in our contracting relationships and we expect every individual, regardless of position or level of responsibility, who is associated with an LAUSD procurement process or contract, to commit to exemplifying high standards of conduct in *all phases* of any relationship with LAUSD.

Given that the business practices and actions of Contractors and their Representatives may impact or reflect upon LAUSD, strict observance with the standards in this Code, all applicable local, state and federal laws, and any other governing LAUSD policies or agreements is not only a minimum requirement for all Contractors and their Representatives, but an ethical obligation as well.

In addition to any specific obligations under a Contractor's agreement with LAUSD, all Contractors and their Representatives shall comply with the following requirements:

- A. *Demonstrate Honesty and Integrity* – Contractors shall adhere to the highest standards of honesty and integrity in all their dealings with and/or on behalf of LAUSD. As a general rule, Contractors must exercise caution and avoid *even the appearance of impropriety or misrepresentation*. All communications, proposals, business information, time records, and any other financial transactions must be provided truthfully, accurately, and completely.
- B. *Be a Responsible Bidder* – Contractors shall demonstrate a record of integrity and business ethics in accordance with all policies, procedures, and requirements established by LAUSD.
 - (1) *Critical Factors* – In considering a Contractor's record of integrity and business ethics, LAUSD may consider factors including, but not limited to: criminal investigations, indictments, injunctions, fines, convictions, administrative agreements, suspensions or debarments imposed by other governmental agencies, tax delinquencies, settlements, financial solvency, past performance, prior determinations of failure to meet integrity-related responsibilities, and violations by the Contractor and its Representatives of any LAUSD policies and Codes in prior procurements and contracts. LAUSD reserves the right to reject any bid, proposal and contract, and to impose other sanctions against Contractors who fail to comply with our district policies and requirements, or who violate the prohibitions set forth below in Section 6, Prohibited Activities.
- C. *Maintain the Cone of Silence* – Contractors shall maintain a Cone of Silence during required times of the contracting process to ensure that the process is shielded from even the appearance of undue influence. Contractors and their Representatives risk disqualification from consideration and/or other penalties outlined in Section 8, Enforcement Provisions, if they engage in prohibited communication during the restricted period(s).
 - (1) *Competitive Contracting Process* – To ensure a level playing field with an open and uniform *competitive* contracting process, Contractors and their Representatives must maintain a Cone of Silence from the time when an Invitation for Bid (IFB), Request for Proposal (RFP), Request for Interest and Bid (RFIB), Request for Quote, Request for Qualification, or any other solicitation release is announced until the time a contract award recommendation is made public by the Board Secretariat's posting of the board report for the contract to be approved. During the time under the Cone of Silence, Contractors and their Representatives are prohibited from making any contact on any part of a proposal, negotiation or contract with any LAUSD official as this could appear to be an attempt to curry favor or influence. An "LAUSD official" is broadly defined to include "any board member, employee, consultant or advisory member of LAUSD" who is involved in making recommendations or decisions for LAUSD.

Schematic of LAUSD's Competitive Contracting Process (Illustrative Only)



- (a) Prohibited Communication – Examples of prohibited communication by Contractors and their Representatives under the Cone of Silence include, but are not limited to:
- (i) contact of LAUSD Officials, including members of the department initiating a contract, or members who will serve on an evaluation team for any contract information that is not uniformly available to all other bidders, proposers or contractors;
 - (ii) contact of LAUSD Officials, including Board Members and their staff, to lobby on any aspect relating to a contract matter under consideration, negotiation, protest or dispute;
 - (iii) contact of LAUSD Officials in the particular department requesting a competitive contract to discuss other business or partnership opportunities.
- (b) Exceptions – The following are exceptions to the Cone of Silence:
- (i) open and uniform communications which are made as part of the procurement process such as the pre- bid or pre-proposal meetings or other exchanges of information which are given to all proposers;
 - (ii) interviews or presentations to evaluation committee members which are part of the procurement process;
 - (iii) clarification requests made in writing, under the terms expressly allowed for in an LAUSD contracting document, to the appropriate designated contract official(s);
 - (iv) negotiations with LAUSD’s designated negotiation team members;
 - (v) protests which follow the process outlined by LAUSD’s protest policies and procedures; and
 - (vi) requests for technical assistance approved by LAUSD contract officials (for example questions relating to LAUSD’s Small Business Enterprise Program, or requests for formal guidance on ethics matters from the Ethics Office).
- (2) Non-Competitive Contracting Process – To ensure the integrity of the non-competitive contracting process, Contractors and their Representatives must maintain a Cone of Silence from the time when a proposal is submitted to LAUSD until the time the contract is fully executed. During this designated time, Contractors and their Representatives are prohibited from making any contact with LAUSD officials on any of the terms of the contract under consideration as this could appear to be an attempt to curry improper favor or influence. The only exceptions to this Cone of Silence are clarification requests made with the Contract Sponsor or the appropriate designated contract official(s) in the Procurement Services Group or Facilities Contracts Branch.

Examples of Maintaining the Cone of Silence

- (3) Mai Vien Da is the CEO of a firm that wants to do business with LAUSD. She is at a party when she sees the head of the LAUSD division that has just issued an RFP that her company is interested in bidding on.

Mai can say “hello,” but she must not discuss her proposal or the contracting process at all with the division head.

- (4) Mai is also interested in having her sales team meet with LAUSD officials district-wide to promote her firm’s services, so that they can sell work on smaller projects that do not need to be competitively bid.

Mai and her employees may attempt to meet with district officials to discuss potential services outside of a competitive process, but she needs to recognize that her marketing activities may require her to register her firm and her employees in LAUSD’s Lobbying Disclosure Program. (See Section 5, Disclosure Obligations).

- D. *Manage Potential Conflicts* – Contractors shall disclose all potential or actual conflicts to LAUSD on an ongoing basis with a Meaningful Conflict Disclosure. A “Meaningful Conflict Disclosure” is a written statement to LAUSD which lays out full, accurate, timely, and understandable information with regard to any potential conflicts involving Contractors and their work for LAUSD. The specific requirements for a Meaningful Conflict Disclosure are set forth in Section 3.D.(2) below. LAUSD relies on these proactive disclosures by Contractors to manage potential conflicts before they become actual conflicts of interest. A potential for conflict is present whenever a situation arises which creates a real or apparent advantage or a

competing professional or personal interest for a Contractor. Such situations become conflicts of interest, if appropriate safeguards are not put into place. Examples of potential or actual conflicts include, but are not limited to situations when:

- a financial relationship (income, stocks, ownership, investments, loans, excessive gifts, etc.) or close personal relationship exists or has existed between a Contractor or its Representatives and a LAUSD official;
- a financial or close personal relationship exists between any officers, directors or key employees of a Contractor or its Representatives and a LAUSD official;
- a prior, current or potential employment relationship exists between a Contractor or its Representatives and a current or former LAUSD official;
- an overlap exists between work that a Contractor or its Representative performs or has performed for LAUSD and work he or she will perform on behalf of another client; or
- an opportunity arises in which a Contractor or its Representative can make a governmental decision within the scope of LAUSD contractual duties that impacts his or her personal financial interests or relationships,

Contractors and their Representatives have a *continuing* obligation to advise LAUSD proactively of any potential conflicts which may arise relating to a contract.

- (1) State Conflict Standards – LAUSD is generally prohibited by California’s Political Reform Act (Government Code Section 87100) and Government Code Section 1090 from contracting with Contractors if the Contractors, their Representatives, their officers, or any household member of the preceding serve LAUSD in any way in developing, awarding, or otherwise participating in the making of the same contract.

California law also governs situations in which there has been a financial interest between a Contractor and a public official within a 12-month window leading up to a governmental decision. It does not matter whether the impact of an existing relationship is beneficial or detrimental to the interests of the Contractors, their Representatives, or the public agency. Moreover, Government Code Section 1090 defines “making a contract” broadly to include actions that are preliminary or preparatory to the selection of a Contractor such as but not limited to: involvement in the reasoning, planning, and/or drafting of scopes of work, making recommendations, soliciting bids and requests for proposals, and/or participating in preliminary discussions or negotiations.

Any contract made in violation of Section 1090 is void and cannot be enforced. When Section 1090 is violated, a government agency is not obligated to pay the Contractor for any goods or services received under the void contract. In fact, the agency can also seek repayment from the Contractor of any amounts already paid and the agency can refer the matter to the appropriate authorities for prosecution.

- (2) Meaningful Conflict Disclosure – Contractors shall provide a meaningful disclosure of all potential and actual conflicts in a written statement to the LAUSD Contract Sponsor, the Ethics Office and the contracting contact from the Procurement Services Group/or the Facilities Contracts Branch. This disclosure requirement is a continuing duty on all Contractors. At a minimum, a Meaningful Conflict Disclosure must identify the following:
 - (a) names and positions of all relevant individuals or entities;
 - (b) nature of the potential conflict, including specific information about the financial interest or relationship; and
 - (c) a description of the suggested remedy or safeguard for the conflict.

- (3) Resolution of Conflicts – When necessary, LAUSD will advise Contractors on how a disclosed conflict should be managed, mitigated or eliminated. The Contract Sponsor, in consultation with the Procurement Services Group/Facilities Contracts Branch, the Ethics Office, and the Office of the General Counsel, shall determine necessary actions to resolve any of the Contractors’ disclosed conflict(s). When it is determined that a conflict must be addressed, a written notification will be made to the Contractor, indicating the actions that the Contractor and LAUSD will need to take to resolve the conflict.

Examples of Managing Potential Conflicts

- (4) Rhoda Warrior is a consultant from Global Consulting Firm. She has been assigned by her firm to do work for a particular LAUSD department. Although she does not directly work with him, her husband, Antonio, is one of the senior officials in that department.

Global Consulting must disclose this potential problem via a Meaningful Conflict Disclosure to LAUSD. Depending on the exact nature of her work within that department, Global Consulting and the LAUSD Contract Sponsor may need to take steps to safeguard Rhoda's work from any actual conflict of interest.

- (5) Amartya Singh is a HR consultant from the Tip Top Talent Agency whose firm is providing temporary support to help LAUSD improve its recruitment efforts. Amartya is himself serving as acting deputy director for the HR division, and in that capacity has been asked to review and approve all bills for the department. In doing his work, Amartya comes across a bill for the Tip Top Talent Agency which requires approval.

Tip Top Talent Agency must disclose the conflict and work with LAUSD to ensure that someone more senior or external to Amarty's chain-of-command is the one that reviews, evaluates, or approves bills relating to Tip Top Talent Agency. Even if Amartya decides to quit Tip Top Talent to join LAUSD, he cannot be involved with matters relating to Tip Top Talent until 12 months have passed from the date he received his last payment from the firm.

- (6) Greta Planner is a technology consultant that has been hired to design all the specifications for a group of new technology labs. One of the services that Greta will be specifying is an automated wireless projection system. As it turns out, Greta owns direct stock in a firm that manufactures these types of projection systems.

Greta's direct stock ownership constitutes a financial interest in that company. She must disclose the potential conflict right away in writing to the LAUSD Contract Sponsor, so that the appropriate safeguards can be put in place to prevent any actual conflict.

- E. *Provide Contracting Excellence* – Contractors are expected to deliver high quality, innovative and cost-effective goods and services to LAUSD, so that the public is served with the best value for its dollars.
- F. *Promote Ethics Standards* – Contractors shall be responsible for ensuring that their Representatives, regardless of position, understand and comply with the duties and requirements outlined in this Code and to ensure that their behavior, decisions, and actions demonstrate the letter and spirit of this Code. Contractors may draw upon the resources provided by LAUSD, including but not limited to those made available by the Ethics Office, the Procurement Services Group, and the Facilities Contracts Branch. Such training resources and additional information about LAUSD policies can be found on LAUSD's website (<https://achieve.lausd.net>).
- G. *Seek Advice* – Contractors are expected and encouraged to ask questions and seek formal guidance regarding this Code or other aspects of responsible business conduct from the LAUSD Ethics Office whenever there is a doubt about how to proceed in an ethical manner. A Contractor's proactive management of potential ethics concerns is necessary and vital since this Code does not seek to address or anticipate all the issues that may arise in the course of seeking or doing business with LAUSD.

Example of Seeking Advice

- (1) Abe Iznismann is President of Accelerated Sciences, a new company that makes supplemental teaching tools in the sciences. Over the summer, Abe hired Grace Principle, a seasoned LAUSD administrator who now works in teacher recruitment, to consult with Accelerated Sciences in developing a cutting-edge learning tool. Originally, the company planned to sell the products only to schools in other states, but now it wants to sell the products in California and possibly to LAUSD. Abe wants to work with Grace to develop a win-win strategy for offering the new tools to LAUSD at a discount.

Accelerated Sciences needs to be very careful to ensure that Grace is not involved in any aspect relating to selling the product to LAUSD, especially since Grace has a financial interest with the firm. Remember, under

California law, the mere existence of a financial interest creates a concern that will cause the good faith of any acts to be questioned, no matter how conscientious the individuals. Before undertaking any effort to sell to LAUSD, Abe or another manager at Accelerated Sciences should seek out advice on other safeguarding measures to ensure that their good intentions do not inadvertently create a bad outcome for the firm or Grace.

4. RELATIONSHIP MANAGEMENT

LAUSD expects Contractors and their Representatives to ensure that their business dealings with and/or on behalf of LAUSD are conducted in a manner that is above reproach.

- A. *Employ Good Practices* – Contractors and their Representatives shall conduct their employment and business practices in full compliance with *all* applicable laws, regulations and LAUSD policies, including but not limited to the following:
- (1) *Equal Employment Opportunity* – Contractors shall ensure that there is no discrimination in hiring due to race, color, religious creed, national origin, ancestry, marital status, gender, sexual orientation, age, or disability.
 - (2) *Health and Safety* – Contractors shall provide a safe and healthy work environment and fully comply with all applicable safety and health laws, regulations, and practices.
 - (3) *Drug Free Environment* – Contractors shall ensure that there is no manufacture, sale, distribution, possession or use of illegal drugs or alcohol on LAUSD-owned or leased property.
 - (4) *No Harassment* – Contractors shall not engage in any sexual or other harassment, physical or verbal abuse, or any other form of intimidation.
 - (5) *Sweat-Free Conditions* – Contractors shall ensure that no child and/or forced or indentured labor is used in their supply chain. Contractors shall require that all goods provided to LAUSD are made in compliance with the governing health, safety and labor laws of the countries of origin. Additionally, Contractors shall ensure that workers are free from undue risk of physical harm or exploitation and receive a non-poverty wage.
- B. *Use Resources Responsibly* – Contractors and their Representatives shall use LAUSD assets for LAUSD business-related purposes only unless given written permission for a specific exception by an authorized LAUSD official. LAUSD assets include: time, property, supplies, services, consumables, equipment, technology, intellectual property, and information.
- C. *Protect Confidentiality* – Contractors and their Representatives shall protect and maintain confidentiality of the work and services they provide to LAUSD. All communications and information obtained in the course of seeking or performing work for LAUSD should be considered confidential. No confidential information relating to LAUSD should ever be disclosed without express authorization by LAUSD in writing, unless otherwise legally mandated.
- D. *Guard the LAUSD Affiliation* – Contractors and their Representatives shall be cautious of how they portray their relationship with LAUSD to the Public. Communications on behalf of LAUSD can only be made when there is express written permission by an LAUSD official authorized by LAUSD's Office of General Counsel.
- (1) *LAUSD Name and Marks* – Contractors shall ensure that all statements, illustrations or other materials using or referencing LAUSD or its marks and logos—including the names and logos of any of our sub-divisions, and/or any logos created by and for LAUSD—receive advance review and written approval of the relevant LAUSD division head prior to release or use.
 - (2) *Commercial or Advertising Message* – Contractors shall ensure that no commercial or advertising message, or any other endorsements—express or implied—are suggested or incorporated in any products, services, enterprises or materials developed for/or relating to LAUSD unless given written permission to do otherwise by LAUSD's Board of Education.

- E. *Respect Gift Limits* – Contractors and their Representatives shall abide by LAUSD’s gift limits and use good judgment, discretion and moderation when offering gifts, meals or entertainment or other business courtesies to LAUSD officials, so that they do not place LAUSD officials in conflict with any specific gift restrictions:
- (1) No Contractor or their Representative shall offer, give, or promise to offer or give, directly or indirectly, any money, gift or gratuity to any LAUSD procurement official at any time.
 - (2) No Contractor or their Representative shall offer or give, directly or indirectly, any gifts in a calendar year to an LAUSD Official which exceed LAUSD’s allowable gift limit.

Example of Respecting Gift Limits

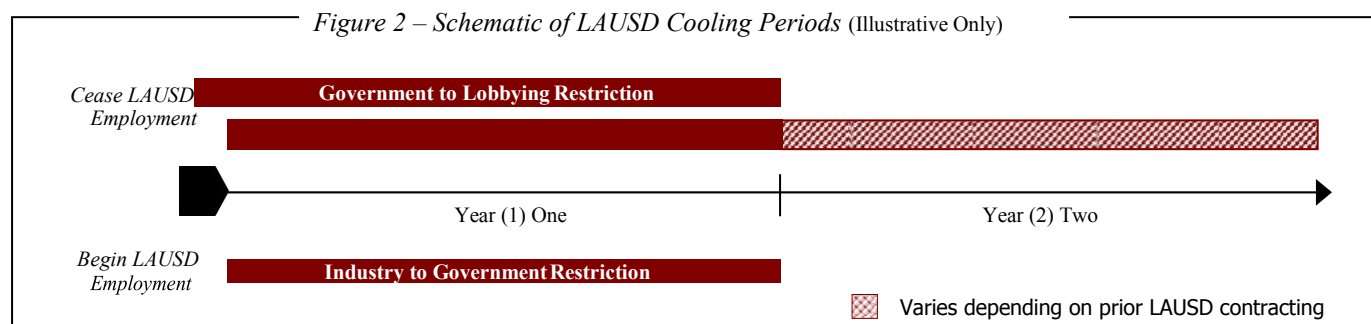
- (3) It’s the holidays and Sue Tienda, a Contractor, wants to take a few LAUSD officials out to lunch and to provide them with gift baskets as a token of thanks for the work they have done together.

Assuming Sue is not attempting to take out any procurement officials (since they observe a zero tolerance policy on gifts), Sue needs to respect the Board-established gift limit for LAUSD officials. Sue should also be aware that giving a gift totaling over \$50 in a year to LAUSD officials will create a reporting responsibility for the officials, if they are designated Form 700 Statement of Economic Interest filers. Additionally, if there is a procurement underway involving Sue or her firm, she should not give gifts to the LAUSD officials who are part of the evaluation process until the contract is awarded. Finally, Sue may also want to keep in mind that a nice personalized thank- you note can pack quite a punch!

Anyone doing business with LAUSD shall be charged with full knowledge that LAUSD’s contracting decisions are made based on quality, service, and value. LAUSD does not seek any improper influence through gifts or courtesies.

- F. *Observe Cooling Periods* – Contractors and their Representatives shall observe and maintain the integrity of LAUSD’s Cooling Periods. A “Cooling Period” is a mechanism used by public agencies and private organizations across the country to ensure that no unfair competitive advantage is extended due to the hiring of current or former employees. Allowing for some time to pass before a former official works on matters related to their prior agency or a new official works on matters related to their prior employer helps to mitigate concerns about the appearance of a “revolving door” where public offices are sometimes seen to be used for personal or private gain.

Contractors shall certify that they are upholding LAUSD’s revolving door provisions as part of the contracting process. In their certification, Contractors shall detail the internal firewalls that have been put in place to preserve LAUSD’s cooling periods. As with other public agencies, LAUSD observes three key types of cooling periods for safeguarding the critical transitions between public service and private industry:



- (1) Government to Lobbying Restriction (One-Year Cooling Period) – LAUSD will not contract with any entity that compensates a former LAUSD official who lobbies LAUSD before a one (1) year period has elapsed from that official’s last date of employment

Example of Lobbying Restriction

Ace Impact Group wants to hire Joe Knowsfolks, a former LAUSD official, to help the company cultivate new business opportunities with LAUSD and arrange meetings with key LAUSD officials.

To avoid the possibility of unfair advantage or improper influence, Ace Impact Group is prohibited from utilizing Joe to contact anyone at LAUSD on their behalf until at least one year has passed from Joe's last date of employment. Joe may help Ace lobby other public entities, but Joe cannot communicate with anyone at LAUSD, either in person or in writing, on behalf of his new company.

(2) Government to Industry Restriction

- (a) Insider Advantage Restriction (One-Year Cooling Period) – LAUSD will not contract with any entity that compensates any current or former LAUSD official to work on a matter with LAUSD, if that official, within the preceding 12 months, held a LAUSD position in which they personally and substantially participated in that matter.

Example of Insider Advantage Restriction

Risky Business is a small boutique firm that helps public agencies, including LAUSD, develop strategies for managing and overcoming their unfunded liability. Risky Business wants to extend an offer of employment to Nooriya, a LAUSD official, whose previous responsibilities included advising LAUSD's Board and management on the issue of the district's unfunded liability.

As part of its certification, Risky Business needs to identify what safeguards it will have in place to ensure that Nooriya's work for them does not include matters relating to her prior LAUSD responsibilities for at least one year from when she left her LAUSD job. Given that "matters" include broad policy decisions, the general rule of thumb for avoiding any insider advantage is to have former LAUSD officials steer clear of LAUSD work for a year.

- (b) Contract Benefit Restriction (Two-Year Cooling Period) – LAUSD will not contract with any entity that employs any current or former LAUSD official who within the preceding two (2) years, substantially participated in the development of the contract's RFP requirements, specifications or any part of the contract's procurement process, if the official will perform any services for the Contractor relating to LAUSD on that contract.

Example of Contracting Benefit Restriction

Technology Advances has just won a big contract with LAUSD and is looking for talent to help support the company's growing work load. The firm wishes to hire some LAUSD employees: Aisha, a LAUSD technology official, her deputy Raj who was the individual who oversaw LAUSD's contracting process with Technology Advances, and Linda, an engineer who was on the evaluation committee that selected Technology Advances.

If Technology Advances hires any of these individuals, none may perform any work for the firm relating to this LAUSD work until two years have elapsed from the date that the contract was fully executed. This case is a good example of how the cooling period seeks to ensure that there is no benefit resulting from a public official's awarding of a contract. All of the LAUSD employees in this example would be considered to have substantially participated in the contract – Raj due to his direct work, Linda due to her role evaluating the bid proposals, and Aisha due to the fact that supervising both employees is a part of her official responsibility.

Technology Advances should consider the implications before hiring individuals involved with their LAUSD contracting process.

- (3) Industry to Government Restriction (One-Year Cooling Period) – In accordance with California law, Contractors and/or their Representatives who act in the capacity of LAUSD officials shall be disqualified from making any governmental decisions relating to a personal financial interest until a 12-month period has elapsed from the time the interest has been disposed or severed.

Example of Industry to Government Restriction

Sergei Konsultantov is an outside contractor that has been hired to manage a major reorganization project for LAUSD. Sergei is on the Board of Directors for several companies who do business with LAUSD.

Sergei must not participate in any governmental decisions for LAUSD relating to any private organization for whom he has served as an employee, officer, or director, even in an unpaid capacity, if less than 12 months has passed since he held such a status. Sergei should contact the Ethics Office before starting his work to put a formal disqualification into effect and to seek out any other ethical safeguards he should have in place.

- (4) In rare and unusual circumstances, LAUSD's General Superintendent or his/her designee upon a showing of good cause may waive the Insider Advantage Restriction in writing with notification to the Board of Education, *prior* to approving a contract or its amendment.

- G. *Safeguard Prospective Employment Discussions* – Contractors and their Representatives shall safeguard any prospective employment discussions with current LAUSD officials, especially when the official is one who may participate “personally and substantially” in a matter relating to the Contractor.

Example of Safeguarding an Employment Offer

- (1) Audit Everything, a firm that does work for LAUSD, has been really impressed by Thora Revue, an audit manager that oversees some of their audits. Audit Everything is interested in having Thora work for their firm.

Before Audit Everything begins any prospective discussions with Thora, they should let her supervisor know of their interest and ask what safeguards need to be put in place. For example, if Thora does not outright reject the idea and is instead interested in entertaining the offer, she and her manager will have to work with the Ethics Office to put into effect a disqualification from any further involvement relating to the Contractor before any actual employment discussions are allowed to proceed. Any Contractor who engages in employment discussions with LAUSD officials before a disqualification has been completed is subject to the penalties outlined in this Code.

- H. *Conduct Political Activities Privately* – Contractors and their Representatives shall only engage in political support and activities in their own personal and voluntary capacity, on their own time, and with their own resources.

- I. *Make Philanthropy Voluntary* – Contractors and their Representatives shall only engage in philanthropic activities relating to LAUSD on their own time and with their own resources. LAUSD views philanthropic support as a strictly voluntary opportunity for Contractors to demonstrate social responsibility and good citizenship. No expressions of support should be construed to have a bearing on current or future contracts with LAUSD. And no current or potential contracting relationship with LAUSD to provide goods or services is contingent upon any philanthropic support from Contractors and their Representatives, unless otherwise designated as part of a bid or proposal requirement in an open, competitive contracting process to solicit a specific type of support.

- (1) *Guidelines for Making a Gift to a Public Agency* – Contractors who wish to provide philanthropic support to LAUSD shall abide by the ethical and procedural policies and requirements established by LAUSD which build upon the “Gifts to an Agency” requirements established in California’s Code of Regulations Section 18944.2. For outside entities to make a gift or payment to LAUSD in a manner that maintains public integrity, the following minimum requirements must be met:
- (a) LAUSD must receive and control the payment;
 - (b) LAUSD must use the payment for official agency business;
 - (c) LAUSD, in its sole discretion, must determine the specific official or officials who shall use the payment. The donor may identify a specific purpose for the agency’s use of the payment, so long as the donor does not designate the specific official or officials who may use the payment; and
 - (d) LAUSD must have the payment memorialized in a written public record which embodies the

requirements of the above provisions and which:

- Identifies the donor and the official, officials, or class of officials receiving or using the payment;
- Describes the official agency use and the nature and amount of the payment;
- Is filed with the agency official who maintains the records of the agency's Statements of Economic Interests (i.e. the Ethics Office); and
- Is filed as soon as possible, but no later than 30 days of receipt of the payment by LAUSD.

5. DISCLOSURE OBLIGATIONS

LAUSD expects Contractors and their Representatives to satisfy the following public disclosure obligations:

- A. *Identify Current and Former LAUSD Officials* – To ensure against conflict or improper influence resulting from employment of current or former LAUSD employees, Contractors and their Representatives shall disclose any of their employees, subcontractors or consultants who within the last three years have been or are employees of LAUSD. The disclosure will be in accordance with LAUSD guidelines and will include at a minimum the name of the former LAUSD employee(s), a list of the LAUSD positions the person held in the last three years, and the dates the person held those positions. Public agencies that provide contract services are not subject to this requirement.
- (1) In rare and unusual circumstances, LAUSD's General Superintendent or his/her designee upon a showing of good cause may waive this disclosure requirement in writing with notification to the Board of Education, *prior* to approving a contract or its amendment.
- B. *Be Transparent about Lobbying* – Contractors and their Representatives shall abide by *LAUSD's Lobbying Disclosure Code* and register and fulfill the associated requirements, if they meet the trigger(s). LAUSD's lobbying policy seeks to enhance public trust and confidence in the integrity of LAUSD's decision-making process by providing transparency via a public record of the lobbying activities conducted by individuals and organizations. A "lobbying activity" is defined as any action taken with the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying or advancing any rule, resolution, policy, program, contract, award, decision, or other proposal under consideration by LAUSD officials.

For further information on LAUSD's lobbying policy, Contractors and their Representatives shall review the resource materials available on the Ethics Office website (<https://achieve.lausd.net/ethics>). Failure to comply with LAUSD's Lobbying Disclosure Code can result in fines and sanctions including debarment from contracting with LAUSD.

- C. *Fulfill the State-Mandated Statement of Economic Interests ("Form 700") Filing Requirement* – Contractors and their Representatives shall abide by the financial disclosure requirements of California's Political Reform Act (Gov. Code Section 81000-91015). Under the Act, individual Contractors and their Representatives may be required to disclose economic interests that could be foreseeably affected by the exercise of their public duties in a disclosure filing called the Statement of Economic Interests or Form 700. A Form 700 serves as a tool for aiding public officials at all levels of government to ensure that they do not make or participate in making, any governmental decisions in which they have an interest.
- (1) *Applicability* – Under the law, individual Contractors and their Representatives are considered public officials and need to file a Form 700 as "consultants", if the services they are contracted to provide fit the triggers identified by the Political Reform Act. Meeting either of the test triggers below requires a Contractor's Representative(s) to file a Form 700:
- (a) *Individual Makes Governmental Decisions* – Filing is required if an individual is involved in activities or decision-making such as: obligating LAUSD to any course of action; authorizing LAUSD to enter into, modify, or renew a contract; granting approval for contracts, plans, designs, reports, studies or other items; adopting or granting approval on policies, standards or guidelines for any subdivision of LAUSD; or negotiating on behalf of LAUSD without significant intervening review.

- (b) Individual Participates in the Making of Governmental Decisions for LAUSD and Serves in Staff-like Capacity – Filing is also required if an individual is performing duties for LAUSD on a continuous or ongoing basis extending beyond one year such as: advising or making recommendations to LAUSD decision makers without significant intervening review; conducting research or an investigation; preparing a report or analysis which requires the individual to exercise their judgment; or performing duties similar to an LAUSD staff position that is already designated as a filer position in *LAUSD's Conflict of Interest Code*.
- (2) Filing Timelines – Individuals who are legally required to complete a Statement of Economic Interests form must submit a filing:
 - (a) upon commencement of work with LAUSD,
 - (b) on an ongoing basis thereafter in accordance with the April 1st annual deadline, and
 - (c) upon termination of work with LAUSD.
- (3) Process – Contractors and their Representatives shall coordinate with their LAUSD Contract Sponsor(s) to ensure that they meet this state mandate in the manner required by law. Form 700s must be received by the LAUSD Ethics Office to be considered properly filed in accordance with the Political Reform Act.
- (4) Disqualifications – Individuals who must file financial disclosure statements are subject to the requirements of the Political Reform Act as is the case with any other “public official” including disqualification when they encounter decision-making that could affect their financial interests. Contractors and their Representatives shall be responsible for ensuring that they take the appropriate actions necessary, so as not to violate any aspect of the Act.

Examples of Form 700 Filers and Non-Filers

- (5) Maria Ley is an attorney for the firm of Legal Eagles which serves as outside counsel to LAUSD. In her capacity as outside counsel, Maria provides ongoing legal services for LAUSD and as such participates in the making of governmental decisions. Maria’s role involves her in advising or making recommendations to government decision-makers and also gives her the opportunity to impact decisions that could foreseeably affect her own financial interests.
Maria would be considered a consultant under the Political Reform Act and would need to file a Form 700.
- (6) The Research Institute has been hired by LAUSD to do a major three-year policy study which will help LAUSD decide the shape and scope of a major after-school tutoring initiative, including the total funding that should be allocated. As part of the Institute’s work, their researchers will help LAUSD design and decide on some additional contracts for supplemental survey research. The Institute knows that all the principal researchers on their team will have to be Form 700 filers because their work is ongoing and will influence LAUSD’s governmental decision. However, the Institute is unsure of whether their trusty secretary, Bea Addman, would have to be a filer.
Bea does not need to file. Even though she will be housed at LAUSD for the three years and act in a staff-like capacity, she will provide clerical support primarily and will not participate in making any governmental decisions.
- (7) Bob Builder works for a construction company that will be supporting LAUSD’s school-building initiative on a continuous basis. Bob will direct activities concerning the planning and construction of various schools facilities, coordinate land acquisition, supervise teams, set policies, and also prepare various budgets for LAUSD.
Bob meets the trigger defined under the law because as part of the services he will provide, he has the authority to affect financial interests and commit LAUSD to government actions at his discretion. Additionally, in his role, he will be performing essentially the same tasks as an LAUSD Facilities Project Manager which is a position that is already designated in LAUSD’s Conflict of Interest Code. Therefore, Bob is required to file a Form 700.

6. PROHIBITED ACTIVITIES

A Contractor, its Representative(s) and all other agent(s) acting on its behalf are prohibited from engaging in the following activities:

GENERAL PROHIBITIONS

- A. *Acting in a manner that would be reasonably known to create or lead to a perception of improper conduct that could result in direct or indirect damage to LAUSD or our reputation*
- B. *Acting with the purpose or intent of placing an LAUSD official under personal obligation to any Contractor or its Representatives*
- C. *Conducting business with or on behalf of LAUSD in a manner that would be reasonably known to create or lead to a perception of self-dealing*
- D. *Conducting work on behalf of another client on a matter that would be reasonably seen as in conflict with work performed for LAUSD*
- E. *Disclosing any proprietary or confidential information, including employee or student health information, about LAUSD, our employees, students, or contractors to anyone not authorized by a written LAUSD re-disclosure agreement to receive the information*
- F. *Knowingly deceiving or attempting to deceive an LAUSD official about any fact pertaining to any pending or proposed LAUSD decision-making*
- G. *Making or arranging for any gift(s) or gratuities that violate LAUSD's policies, including:*
 - (1) *Providing any gifts at all to a procurement employee;*
 - (2) *Providing any gifts in excess of LAUSD's gift limit in a calendar year to any LAUSD official or to a member of his/her household; and*
 - (3) *Providing gifts without the necessary public disclosure when disclosure is required*
- H. *Offering any favor, gratuity, or kickback to an LAUSD official for awarding, modifying, or providing preferential treatment relating to an LAUSD contract*
- I. *Receiving or dispersing compensation contingent upon the defeat, enactment, or outcome of any proposed policy or action*
- J. *Taking any action to circumvent LAUSD's system of controls or to provide misleading information on any documents or records*
- K. *Using LAUSD assets and resources for purposes which do not support LAUSD's work*
- L. *Using LAUSD provided technology or systems to create, access, store, print, solicit or send any material that is false, derogatory, malicious, intimidating, harassing, threatening, abusive, sexually explicit or otherwise offensive*
- M. *Violating or counseling any person to violate any provisions of LAUSD's Contractor Code of Conduct, Lobbying Disclosure Code, Employee Code of Ethics, and/or any other governing state or federal laws*

CONTRACTING PROHIBITIONS

- N. *Dealing directly with an LAUSD official who is a close relative or cohabitant with a Contractor or its Representatives in the course of negotiating a contracting agreement or performing a Contractor's obligation*
 - (1) *For the purposes of this policy, close relatives shall be defined as including spouse, sibling, parent, grandparent, child, and grandchild. Cohabitants shall be defined as persons living together.*
- O. *Engaging in prohibited communication with LAUSD officials during the Cone of Silence time period(s) of the contracting process*
 - (1) *In a competitive contracting process, the Cone of Silence begins from the time when an Invitation for Bid (IFB), Request for Proposal (RFP), Request for Interest and Bid (RFIB), Request for Quote, Request for Qualification, or any other solicitation release is announced by LAUSD until the time a contract award recommendation is made public by the Board Secretariat's posting of the board report for the contract to be approved.*
 - (2) *In a non-competitive contracting process, the Cone of Silence begins at the time when a proposal is submitted to LAUSD until the time the contract is fully executed.*

- P. Employing any current or former LAUSD employee to perform any work prohibited by the “Cooling Periods” defined in Section 4F of this Code*
- Q. Making or participating in the making of governmental decisions on behalf of LAUSD when a Contractor or its Representatives has an existing financial interest that is prohibited under the law*
- R. Making any substitution of goods, services, or talent that does not meet contract specifications without prior approval from LAUSD*
- S. Making false charges on claims for payment submitted to LAUSD in violation of the California False Claims Act, Cal. Government Code §§ 12650-12655*
- T. Requesting, attempting to request, or accepting—either directly or indirectly—any protected information regarding present or future contracts before the information is made publicly available at the same time and in the same form to all other potential bidders*
- U. Submitting a bid as a proposer or sub-proposer on a particular procurement after participating in its development (e.g. identifying the scope of work, creating solicitation documents or technical specifications, developing evaluation criteria, and preparing contractual instruments)*

LOBBYING PROHIBITIONS

- V. Engaging in any lobbying activities without the appropriate disclosure, if the registration trigger has been met*
- W. Lobbying on behalf of LAUSD, if a Contractor or its Representatives is lobbying LAUSD officials.*
 - (1) Any person or entity who receives compensation to lobby on behalf of or otherwise represent LAUSD, pursuant to a contract or sub-contract, shall be prohibited from also lobbying LAUSD on behalf of any other person or entity for compensation as this would be considered a conflict of interest.

7. ISSUES RESOLUTION

Early identification and resolution of contracting or other ethical issues that may arise are critical to building public trust. Whenever possible, it is advisable to initiate the issue resolution process proactively, either with the designated contracting contact if the issue arises during the contracting process, or with the Contract Sponsor in the case of an active contract that is being carried out. It is always appropriate to seek out the Procurement Services Group or the Facilities Contracts Branch to resolve an issue, if another alternative is not possible. Formal disputes regarding bid solicitations or contract awards should be raised and addressed in accordance with LAUSD policy where such matters will be given full, impartial, and timely consideration.

8. ENFORCEMENT PROVISIONS

While Contractors and their Representatives are expected to self-monitor their compliance with this Contractor Code of Conduct, the provisions of this Code are enforceable by LAUSD. Enforcement measures can be taken by LAUSD’s Procurement Services Group or Facilities Contracts Branch in consultation with the Contract Sponsor, the Ethics Office, the Office of the General Counsel, and the Office of the Inspector General. The Office of the Inspector General may also refer matters to the appropriate authorities for further action.

- A. Report Violations* – Good faith reporting of suspected violations of the Contractor Code of Conduct is encouraged. Reports of possible violations should be made to the Office of the Inspector General where such reports will be investigated and handled with the level of confidentiality that is merited and permitted by law. No adverse consequences will result to anyone as a result of making a good faith report.
- B. Cooperate on Audits and Investigations* – Contractors and their Representatives shall cooperate with any necessary audits or investigations by LAUSD relating to conduct identified in this Code. Such audits and investigations may be conducted when LAUSD has reason to believe that a violation of this Code has occurred. Once an audit or investigation is complete, LAUSD may contact a Contractor or their Representatives to establish remedies and/or sanctions.
- C. Comply with Sanctions* – Contractors and their Representatives shall comply with the necessary sanctions for violations of this Code of Conduct. Remedies can include and/or combine one or more of the following actions:
 - (1) Removal of offending Contractor or subcontractor;

- (2) Implementation of corrective action plan approved by LAUSD;
- (3) Submission of training plan for preventing future violations of the Code;
- (4) Probation for 1-3 years;
- (5) Rescission, voidance or termination of a contract;
- (6) Suspension from all LAUSD contracting for a period of time;
- (7) Prohibition from all LAUSD lobbying activities;
- (8) Compliance with deferred debarment agreement;
- (9) Debarment from all LAUSD procurement or contracting; or
- (10) Other sanctions available by law that are deemed reasonable and appropriate.

In the case of a procurement in which a contract has yet to be awarded, LAUSD reserves the right to reject any bid or proposal, to terminate the procurement process or to take other appropriate actions.

Failure to remedy the situation in the timely manner prescribed by LAUSD can result in additional sanctions. *Records of violations or any other non-compliance are a matter of public record.*

Any debarment proceeding will follow due process in accordance with the procedures described in LAUSD's Debarment Policy.

9. FUTURE CODE UPDATES

To ensure that LAUSD maintain our effectiveness in promoting integrity in our contracting processes and our use of public tax dollars, LAUSD reserves the right to amend and modify this Contractor Code of Conduct at its discretion. LAUSD's Ethics Office will post the latest version of the Code on its website. Interested parties with ideas on how LAUSD can strengthen our Code to improve public trust in the integrity of LAUSD's decision-making can contact LAUSD's Ethics Office in writing to share their comments. Such comments will be evaluated for future code updates.

LAUSD is not responsible for notifying a Contractor or their Representatives of any changes to this Code. It is the responsibility of a Contractor to keep itself and its Representatives apprised of any changes made to this Code. LAUSD is not responsible for any damages that may occur as a result of a Contractor's failure to fulfill its responsibilities of staying current on this Code.

10. SEVERABILITY

If one part or provision of this Contractor Code of Conduct, or its application to any person or organization, is found to be invalid by any court, the remainder of this Code and its application to other persons or organizations, which has not been found invalid, shall not be affected by such invalidity, and to that extent the provisions of this Code are declared to be severable.

FIRST AMENDMENT TO AGREEMENT FOR COVID-19 TESTING SERVICES

This FIRST AMENDMENT TO AGREEMENT FOR COVID-19 TESTING SERVICES (“First Amendment”), is made and entered into as of September 10, 2020 (the “Amendment Date”) by and between SUMMERBIO LLC, a Delaware limited liability company (“Contractor”), and LOS ANGELES UNIFIED SCHOOL DISTRICT (the “District”) with reference to the following facts:

A. Contractor and the District are parties to that certain Agreement for COVID-19 Testing Services, dated as of August 14, 2020 (the “Agreement”), which sets forth the agreements of such parties regarding Contractor’s provision of end-to-end COVID-19 testing services to the District using Contractor’s gold-standard RT-qPCR test. Initially capitalized terms used in this First Amendment and not defined herein shall have the meanings given to them in the Agreement.

B. As of the Amendment Date, Contractor has delivered 103,680 Collection Kits to the District and has performed a series of mutually agreed upon dry runs.

C. During the month of September 2020, Contractor and the District wish to reduce the total number of (i) Collection Kits delivered by Contractor to the District, (ii) Collected Samples processed by Contractor and (iii) Test Results delivered by Contractor to the District as further set forth in **Exhibit B (Contract Price and Delivery Schedule)**.

D. Contractor and the District now desire to enter into this First Amendment to amend the terms and conditions of the Agreement in accordance with the terms herein.

NOW, THEREFORE, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated by reference herein.

2. Contract Price and Delivery Schedule. **Exhibit B (Contract Price and Delivery Schedule)** is hereby amended and replaced in its entirety by the updated **Exhibit B** attached to this First Amendment.

3. Counterparts; Electronic Signatures. This First Amendment may be executed in any number of identical counterparts, any, or all of which may contain the signatures of fewer than all of the parties but all of which shall be taken together as a single instrument. The words “execution”, “signed” and “signature” and words of like import in this First Amendment shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, “.pdf”, “.tif” or “.jpg”) and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper based recordkeeping system to the fullest extent permitted by applicable law, including, without limitation, the Electronic

Signatures in Global and National Commerce Act, any state law based on the Uniform Electronic Transactions Act and the Uniform Commercial Code.

4. Entire Agreement. This First Amendment and the Agreement embody the entire agreement and understanding of the parties hereto as to the subject matter contained herein. This First Amendment shall not be modified, changed, terminated, amended, superseded, waived, or extended except by a written instrument executed by the parties hereto.

5. Effect of This First Amendment. Except as amended and/or modified by this First Amendment, the Agreement is hereby ratified and confirmed and all other terms of the Agreement shall remain in full force and effect, unaltered and unchanged by this First Amendment. In the event of any conflict between the provisions of this First Amendment and the provisions of the Agreement, the provisions of this First Amendment shall prevail. Whether or not specifically amended by the provisions of this First Amendment, all of the terms and provisions of the Agreement are hereby amended to the extent necessary to give effect to the purpose and intent of this First Amendment. To the extent of any inconsistency between the Agreement and the First Amendment, this First Amendment shall control.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the Amendment Date.

LAUSD:

LOS ANGELES UNIFIED SCHOOL DISTRICT

David D. Hart

By: _____

Name: David Hart

Title: Chief Financial Officer

CONTRACTOR:

SUMMERBIO LLC,
a Delaware limited liability company

Guido Baechler

By: _____

Name: Guido Baechler

Title: Chief Executive Officer

EXHIBIT B

CONTRACT PRICE AND DELIVERY SCHEDULE

Summary

- The District commits to pre-purchase capacity for the full 2020-2021 school year on a take-or-pay basis, paid on the dates set forth in the Delivery Schedule below.
- Contractor will ensure the District has at least two (2) weeks of capacity of Collection Kits in inventory on hand, provided that during the ramp-up phase this number may be approximately three (3) days of Collection Kit capacity in inventory.
- The total Contract Price and Delivery Schedule of this **Exhibit** will be updated by mutual agreement of the parties at such time as Contractor has the capacity and the District exercises its option to increase its purchase commitment to the anticipated level of 200,000 Tests per week.

Option to reserve additional capacity for 2020-2021 school year at a rate of \$10/Test or the then-current per Test price, whichever is higher.

- Each option can be exercised at any time before the end of calendar year 2020 and upon election by the District to commit to purchase such blocked capacity for the rest of the school year, the Committed Amount shall be increased, and Contractor shall enable such capacity to process the additional Collection Kits and continue delivering Test Results in accordance with the SLAs set forth in **Exhibit C** and increase its provision of Collection Kits accordingly.
- The District may provide notice to reserve capacity for 20,000 additional Tests per day on no less than six (6) weeks prior notice, and based on such lead time, Contractor will provide Collection Kit inventory and processing capacity accordingly.
- The District may reserve capacity for 20,000 additional Tests per day on no less than eight (8) weeks prior notice, and based on such lead time, Contractor will provide Collection Kit inventory and processing capacity accordingly.
- After the first two (2) options have been exercised, each additional increase in capacity of 20,000 will be subject to an incremental two (2) weeks of lead time required for prior notice (e.g., ten (10) weeks, twelve (12) weeks, etc.)

Credits in the event the Testing Services are not utilized.

- In the event that the District gives Contractor at least two (2) weeks' notice that, due to a Force Majeure Event, the District will not utilize the full Committed Amount and would like to decrease the District's Committed Amount (the "Surrendered Capacity"), Contractor agrees to use all commercially reasonable efforts to substitute alternate customers for the Surrendered Capacity. If Contractor, using commercially reasonable efforts, is able to reallocate some or all of the Surrendered Capacity to an alternative purchaser: (i) the District will return excess Collection Kits to Contractor; (ii) the District will have its Committed Amount reduced by the Surrendered Capacity actually resold by Contractor; and (iii) net of all Contractor reasonable reallocation costs, Contractor will credit the next payment made by the District to Contractor equal to the

amount of fees charged to the District for the Surrendered Capacity that Contractor has been able to reallocate to other customers. For the avoidance of doubt, that portion of the Committed Amount allocated during the notice period shall not be considered Surrendered Capacity.

Credits for damaged, missing, or non-conforming Collection Kits.

- In the event that Contractor (A) (i) fails to deliver any Collection Kit in accordance with the delivery schedule set forth on **Exhibit B**, (ii) delivers Non-Conforming Collection Kits, or (iii) otherwise delivers damaged Collection Kits to the District, and (B) such missing, damaged or Non-Conforming Collection Kits are not timely replaced such that the District is prevented from collecting samples in accordance with the Committed Amounts, then the District shall receive a credit equal to the amount of fees charged for those damaged, missing or Non-Conforming Test Kits against the next payment made by the District to Contractor for each missing, delayed, damaged, or non-conforming Collection Kit.

SLA Credits.

- In the event that Contractor fails to meet the specified SLAs set forth in **Exhibit C**, the District shall receive a credit against the next payment made by the District to Contractor for each Test Result provided outside the SLA set forth in **Exhibit C**. For example, if the SLA specifies that 80% of the Collection Kits returned to Contractor by the District in accordance with this Agreement over a two week period will be processed by 5 a.m. the next day, but only 70% of such Collection Kits delivered over the two week period is processed by the deadline, then the District shall receive a credit equal to the amount of fees charged for those Test Results that were not provided within the applicable SLA (10% of such Collection Kits delivered over a two week period).
- Contractor will process all Collection Kits delivered to the Contractor by the District, regardless of whether such processing occurs outside of the stated SLA, and Contractor shall use reasonable commercial efforts to deliver the Test Results by 5 a.m. the next day.

Contract Price

Total Contract Price: \$48,909,940

*The total contract price is subject to change if the Committed Amount increases following the District’s exercise of one or more options set forth in this **Exhibit B**.

<u>Set Up Fee and first Committed Amount</u> <u>Payment upon completion of the Dry-Run</u> <u>Testing payable at the end of Week 5 in the</u> <u>table below</u>	<u>\$3,720,000</u>
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Price Per Test Result

<u>Test Results Delivered</u>	<u>Price per Test Result</u>
0-475,000	\$20
475,001-800,000	\$14
800,001-1,200,000	\$13
1,200,001-1,600,000	\$12
1,600,001-2,000,000	\$11
2,000,001 and thereafter	\$10

Delivery Schedule

Week Beginning	Weekly Kits Delivered	Weekly Tests Completed	Daily Tests	Cumulative Tests	Average Price Per Test	Test Payment	Milestone Payment	Total Payment	Comments
8/10/2020	1,000	-	-	-	\$20.00				
8/17/2020	30,000	1,000	200	1,000	\$20.00				
8/24/2020	55,000	30,000	6,000	31,000	\$20.00				
8/31/2020	10,000	55,000	11,000	86,000	\$20.00				
9/7/2020	-	10,000	2,000	96,000	\$20.00	\$1,720,000	\$2,000,000	\$3,720,000	Setup payment after completion of 1,000 test dry runs to be made on or before 9/11. Change from shipping kits 1 week in advance of testing, to shipping 2 weeks in advance.
9/14/2020	58,856	25,000	5,000	121,000	\$20.00				
9/21/2020	100,000	50,000	10,000	171,000	\$20.00	\$10,173,986		\$10,173,986	Payment for tests to be completed in Sept/Oct to be made on or before 9/25.

Week Beginning	Weekly Kits Delivered	Weekly Tests Completed	Daily Tests	Cumulative Tests	Average Price Per Test	Test Payment	Milestone Payment	Total Payment	Comments
9/28/2020	100,000	75,000	15,000	246,000	\$20.00				
10/5/2020	100,000	100,000	20,000	346,000	\$20.00	\$6,653,987		\$6,653,987	Payment for tests completed in November
10/12/2020	100,000	100,000	20,000	446,000	\$20.00				
10/19/2020	100,000	100,000	20,000	546,000	\$15.74				Transition from \$20/test to \$14/test
10/26/2020	100,000	100,000	20,000	646,000	\$14.00				
11/2/2020	100,000	100,000	20,000	746,000	\$14.00	\$4,853,988		\$4,853,988	Payment for tests completed in December
11/9/2020	100,000	100,000	20,000	846,000	\$13.54				Transition from \$14/test to \$13/test
11/16/2020	100,000	100,000	20,000	946,000	\$13.00				
11/23/2020	100,000	100,000	20,000	1,046,000	\$13.00				
11/30/2020	100,000	100,000	20,000	1,146,000	\$13.00				
12/7/2020	100,000	100,000	20,000	1,246,000	\$12.54	\$4,453,989		\$4,453,989	Payment for tests completed in January, Transition from \$13/test to \$12/test
12/14/2020	100,000	100,000	20,000	1,346,000	\$12.00				
12/21/2020	100,000	100,000	20,000	1,446,000	\$12.00				
12/28/2020	100,000	100,000	20,000	1,546,000	\$12.00				
1/4/2021	100,000	100,000	20,000	1,646,000	\$11.54	\$4,053,990		\$4,053,990	Payment for tests completed in February, Transition from \$12/test to \$11/test
1/11/2021	100,000	100,000	20,000	1,746,000	\$11.00				

Week Beginning	Weekly Kits Delivered	Weekly Tests Completed	Daily Tests	Cumulative Tests	Average Price Per Test	Test Payment	Milestone Payment	Total Payment	Comments
1/18/2021	100,000	100,000	20,000	1,846,000	\$11.00				
1/25/2021	100,000	100,000	20,000	1,946,000	\$11.00				
2/1/2021	100,000	100,000	20,000	2,046,000	\$10.54	\$5,000,000		\$5,000,000	Payment for tests completed in March, Transition from \$11/test to \$10/test
2/8/2021	100,000	100,000	20,000	2,146,000	\$10.00				
2/15/2021	100,000	100,000	20,000	2,246,000	\$10.00				
2/22/2021	100,000	100,000	20,000	2,346,000	\$10.00				
3/1/2021	100,000	100,000	20,000	2,446,000	\$10.00	\$4,000,000		\$4,000,000	Payment for tests completed in April
3/8/2021	100,000	100,000	20,000	2,546,000	\$10.00				
3/15/2021	100,000	100,000	20,000	2,646,000	\$10.00				
3/22/2021	100,000	100,000	20,000	2,746,000	\$10.00				
3/29/2021	100,000	100,000	20,000	2,846,000	\$10.00				
4/5/2021	100,000	100,000	20,000	2,946,000	\$10.00	\$6,000,000		\$6,000,000	Payment for tests completed in May and June
4/12/2021	100,000	100,000	20,000	3,046,000	\$10.00				
4/19/2021	100,000	100,000	20,000	3,146,000	\$10.00				
4/26/2021	100,000	100,000	20,000	3,246,000	\$10.00				
5/3/2021	100,000	100,000	20,000	3,346,000	\$10.00				
5/10/2021	100,000	100,000	20,000	3,446,000	\$10.00				

Week Beginning	Weekly Kits Delivered	Weekly Tests Completed	Daily Tests	Cumulative Tests	Average Price Per Test	Test Payment	Milestone Payment	Total Payment	Comments
5/17/2021	100,000	100,000	20,000	3,546,000	\$10.00				
5/24/2021	100,000	100,000	20,000	3,646,000	\$10.00				
5/31/2021	-	100,000	20,000	3,746,000	\$10.00				
6/7/2021	-	100,000	20,000	3,846,000	\$10.00				
Total	3,846,000	3,846,000				\$46,909,940	\$2,000,000	\$48,909,940	
Average price						\$12.20			

Collection Kits processed by the Contractor in excess of the Committed Amounts allocated for a given day: (i) shall be processed at the applicable average price per Test set forth above; (ii) shall not be included in the aggregate total of Collection Kits for the purposes of the bulk discount; and (iii) shall not be subject to the SLAs set forth in **Exhibit C**. Contractor shall use commercially reasonable efforts to process such Collection Kits in a timely manner and to replenish the Collection Kits available to the District. Future shortages caused by the District's usage of Collection Kits above the Committed Amounts (as the same may be increased pursuant to the District exercising its options set forth in this **Exhibit B**) will not count against Contractor for the impacted weeks until Collection Kits can be fully replenished in the ordinary course.