

STANDARD AGREEMENT - AMENDMENT

STD 213A (Rev. 4/2020)

 CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 39 PAGES

AGREEMENT NUMBER

6141-2019

AMENDMENT NUMBER

1

Purchasing Authority Number

GOES-0690

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Governor's Office of Emergency Services

CONTRACTOR NAME

Verily Life Sciences LLC

2. The term of this Agreement is:

START DATE

April 18, 2020

THROUGH END DATE

August 31, 2020

3. The maximum amount of this Agreement after this Amendment is:

\$32,941,943.00 (not to exceed)

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

I. The term of this Agreement is extended to August 31, 2020, and the cost of this Agreement is increased by \$19,791,943.00 to a not-to-exceed total of \$32,941,943.00.

II. The Exhibit A Scope of Work, Exhibit B Attachment 1, Exhibit D Special Provisions, and Exhibit F Data Transfer Plan are replaced with the amended versions enclosed herein.

III. The "Data Transfer Plan" is erroneously referenced on the executed STD 213 Form of the Agreement as "Exhibit G," and is hereby corrected to "Exhibit F."

IV. The HIPPA Business Associate Addendum is hereby added to this Agreement as Exhibit G and enclosed herein.

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

Verily Life Sciences, LLC

CONTRACTOR BUSINESS ADDRESS

269 East Grand Avenue

CITY

South San Francisco

STATE

CA

ZIP

94080

PRINTED NAME OF PERSON SIGNING


Andrew Conrad

TITLE

Chief Executive Officer

CONTRACTOR AUTHORIZED SIGNATURE

Andrew Conrad

 Digitally signed by Andrew Conrad
Date: 2020.06.17 20:58:12 -07'00'

DATE SIGNED

STANDARD AGREEMENT - AMENDMENT

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AGREEMENT NUMBER

6141-2019

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Purchasing Authority Number

GOES-0690

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Governor's Office of Emergency Services

CONTRACTING AGENCY ADDRESS

3650 Schriever Avenue

CITY

Mather

STATE

CA

ZIP

95655

PRINTED NAME OF PERSON SIGNING

Heather Carlson

TITLE

Assistant Director, Administrative Services

CONTRACTING AGENCY AUTHORIZED SIGNATURE

Tabitha StoutDigitally signed by Tabitha Stout
Date: 2020.06.17 21:11:51 -07'00'

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

Exempt per Governor's March 4, 2020
Emergency Proclamation (COVID-19)

EXHIBIT A – SCOPE OF WORK

Overview

Verily has developed a model for a COVID-19 screening and drive thru sample collection and testing program for eligible individuals (the “**Program**”) and is collaborating with State, Counties, and other government authorities to deploy the Program due to the Governor’s State of Emergency Proclamation dated March 4, 2020 Executive Order N-25-20, in response to COVID-19, and deployment and operation of the Program is directly related to that emergency and intended for the preservation of public health and safety.

The State would like to collaborate with Verily to deploy and operate the Program to serve at-risk residents of the State of California (the “**Participants**”) in various counties throughout California (each such County where the Program is deployed, a “**County**”, and collectively the “**Counties**”) at various sites in each County (each, a “**Site**”).

Prior to this Agreement, Verily deployed the Program at Santa Clara County and San Mateo County (the “Verily-Operated Sites”) and at other pilot sites in Riverside County, Sacramento County, San Joaquin County, Los Angeles County, and the City and County of San Francisco (collectively, together with the Verily-Operated Sites, the “Pilot Sites”). Payment for services and costs for the Pilot Sites through April 17, 2020, are exclusively covered in a separate contract between Verily and the State. This Agreement covers services going forward from April 18, 2020, at the Pilot Sites and any additional sites selected by the State and deployed in coordination with Verily and the Counties.

Services

The State, working jointly with the California Department of Public Health (“CDPH”), will decide and inform Verily of Sites where Verily should deploy services, and which elements of services are requested. The State will pay Verily in accordance with the all-inclusive agreed-upon Rates in Exhibit B.

1. **Verily Activities.** At State and CDPH’s joint direction with respect to each County, and subject to each such County’s willingness to collaborate and to abide by the terms of this Agreement, Verily will perform certain activities in collaboration with State, CDPH and each County in support of State, CDPH and Counties’ operation of the Program as follows (collectively, the “**Verily Activities**”):
 - 1.1. **Screening Platform.** Verily will use the screening platform established through Verily’s Project Baseline website (the “**Platform**”) to screen Participants for eligibility for the Program. The parties acknowledge and agree that the eligibility criteria are based on national and state recommendations, and may evolve over time. State and CDPH acknowledge and agree that Verily ~~has the right to~~ shall alter the eligibility criteria based on directives received from State and CDPH, through its authorized representative(s) ~~nominated by the Governor’s office~~, or national government at any time.
 - 1.2. **Scheduling.** Subject to each County’s performance of its obligations as set forth in Section 2.2, Verily will use best efforts to schedule eligible Participants for sample collection at the

Site during the hours of operation mutually established between Verily and the relevant County, or as otherwise agreed by the parties.

- 1.3. **Verily-Operated Sites On-Site Activities.** For the Verily-Operated Sites, except as otherwise agreed by the parties, Verily is responsible for all end-to-end operations in connection with the Program, including event space, supplies, staffing (including contracted HCPs), security, and day-to-day logistics.
- 1.4. **Establishing Sites. Verily must obtain written approval from CDPH's Project Representative prior to establishing services at new Sites. The CDPH Projective Representative may be changed without amendment to the Agreement by providing written notification to Verily. The CDPH Project Representative for purposes of this Agreement is:**

Ngoc Ly Le
CDPH Testing Task Force Project Manager
California Department of Public Health
Telephone: (916) 445-9692
Email: ngoc.le@cdph.ca.gov

For clarity, existing Site locations as of June 15, 2020 (active and inactive) are set forth on Exhibit A - Attachment 2.
- 1.5. **Call Center Support.** Verily will operate a call center to provide support to Participants experiencing issues with using the Platform or scheduling an appointment. Call center support is expected to be available for business hours on a best efforts basis. For clarity, the call center may be operated by Verily or its affiliates or third party contractors.
- 1.6. **Playbook.** Verily will provide **CDPH and** County personnel with a copy of the site set-up playbook for the Program, which includes recommendations regarding deployment and operation of the Program (the "**Playbook**").
- 1.7. **Initial Setup.** Verily will provide County personnel with: (i) the Playbook, (ii) training on the Platform, including the scheduling and booking system required for County personnel to input schedule and test availability at the site, and (iii) a recommendation for requisition and label printing hardware. Each County will be responsible for establishing appropriate IT and internet infrastructure.
- 1.8. **Requisitions and Labels.** Verily will be responsible for contracting with a third party (the "**Requisition Provider**") to approve requisitions for screening for eligible Participants and to provide each County with a method of obtaining the necessary labels for sample collection. If Verily determines that an alternative approach to requisitions and labeling has become feasible during the course of the Program, Verily will notify State, **CDPH**, and/or the applicable Counties and the parties will collaborate in good faith to adjust the workflow and third party contracting, as appropriate, to accommodate the new approach.
- 1.9. **Lab Testing.** Verily will be responsible for contracting with a laboratory to conduct all testing of samples collected through the Program (the "**Testing Lab**"). If Verily determines that an alternative approach to laboratory testing has become feasible during the course of the Program, Verily will notify State, **CDPH**, and/or the applicable Counties and the parties will collaborate in good faith to adjust the workflow and third party contracting, as appropriate, to accommodate the new approach.
- 1.10. **Data Transmission. Subject to the last sentence of this paragraph, all data collected and results received will be sent to the Counties' Health Officers and CDPH via data**

exchange to CalREDIE by the Testing Lab. Verily will transmit results and data through a secure file access and download of structured data and will include, at a minimum, the data fields set forth on the Data Transfer Plan attached hereto as Exhibit F. If a County does not use CalREDIE or the Testing Lab use of CalREDIE is insufficient for CDPH report, Verily will ensure that all data and results are reported separately through CDPH-approved means to such County, which includes the method of secure file access and download of structured data in use by Verily and Counties on the date of the execution of this Agreement.

Where applicable, Verily represents that it will comply with, and will use reasonable efforts to require that Testing Labs comply with, the State of California's mandated reporting requirements as set forth under title 17 of the California Code of Regulations section 2505. To the extent known, the results and data shall include the date the specimen was obtained, the Participant identification number, the specimen accession number or other unique specimen identifier, the specimen site, the diagnosis code, the laboratory findings for the test performed, and the date that the laboratory findings were identified. To the extent known, the results and data shall also include the name, address, telephone number, pregnancy status, and date of birth of the person from whom the specimen was obtained. In addition, to the extent volunteered by the Participant to Verily, Verily will report race/ethnicity data fields and add Participant's primary care physician.

- 1.11. **Insurance Information Collection.** Verily will collect insurance information from Participants and will (a) share such information with the Requisition Provider and Testing Lab so that they can bill each Participant's insurance carrier for all billable testing expenses (to the extent insurance information has been provided for such Participant) and (b) require Requisition Provider and Testing Lab make a good faith effort to obtain insurance reimbursements for each Participant; provided that Verily will not share such information or ask Requisition Provider or Testing Lab to seek reimbursement until CDPH provides notice to Verily that it is ready to proceed with such activities. If Verily is able to bill insurance carriers directly for any of the testing expenses, Verily may do so as well; provided that Verily will not do so until CDPH provides notice that it is ready to proceed with seeking reimbursement as noted in the preceding sentence. For clarity, Verily will bill the State upfront for testing expenses and Verily will then reimburse State for amount received from Requisition Provider and Testing Lab, or directly from insurance carriers if applicable, after they receive reimbursement from insurance carriers for testing expenses.
- 1.12. **Return of Results.** Subject to receipt of the test results from the Testing Lab, Verily will require that the Requisition Provider communicates the results of each test to the applicable Participant. The parties acknowledge and agree that the method of return of results may change over time, subject to mutual agreement of the parties.
- 1.13. **Supplies.** State and CDPH acknowledge and agree that all supplies, including sample collection kits ("**Test Kits**") and personal protective equipment ("**PPE**"), are to be directly sourced by each County (including any supplies available from FEMA, State or the Federal Government). Notwithstanding the foregoing, Verily will release Test Kits and/or PPE made available to Verily from the State and/or federal supply stockpiles to each Site to the extent those supplies are available. Furthermore, Verily will also use reasonable efforts to provide such supplies to each Site which it has directly procured from other sources during the initial two to four weeks of launch of a new Site. For clarity, State acknowledges and agrees that supplies for the Program are scarce and that Verily is not making a firm commitment regarding the number of Test Kits or PPE that may be provided or released by Verily to any individual County for use by County at its Site, and Verily does not have an obligation to source or provide any supplies, including Test Kits and PPE that it has procured on its own.

- 1.14. As Needed Medical Personnel (Health Care Providers) (HCPs).** When agreed in advance by the State CDPH, Verily may provide subcontracted HCPs. Verily shall ensure all such personnel have all requisite qualifications and licensures to perform such work. HCPs shall be billed at the not-to-exceed Rates identified in Exhibit B.
- 2. State and County Activities.** State working jointly with CDPH and/or the applicable County will perform certain activities in collaboration with Verily in connection with its operation of the Program as follows (collectively, the “**State/County Activities**”):
- 2.1. On-site Logistics and Supplies.** Except as otherwise agreed by the parties, State, CDPH, or County will be responsible for all logistics and directly sourcing and purchasing supplies for the Program at the Site, including without limitation, engagement with the Site operator, personnel to staff the Program at the Site (including health care providers, security, etc), PPE supplies, and test kits.
- 2.2. Scheduling and Capacity Information.** Each County will provide Verily with all necessary information regarding scheduling and capacity at its Site in order to facilitate Verily’s ability to perform the scheduling activities described in Section 1.2. Without limiting the foregoing, each County will provide Verily with a daily schedule (i.e., hours of operation for the Site), daily sample collection capacity estimates, and a daily report on the number of registered Participants who completed their appointments at the Site. This information will be communicated by County to Verily through the Platform (or other tools as mutually agreed to by the Parties).
- 2.3. Requisitions and Labels.** Each County is responsible for printing and appropriate handling of requisitions and labels for sample collection, including ensuring that samples are labeled according to lab requirements and protocols and that Participant Data is appropriately protected and secured.
- 2.4. Sample Collection.** Each County will be responsible for engaging health care providers (or other appropriately qualified personnel) to conduct sample collection at the Site (the “**HCPs**”), except as may be otherwise agreed to by the parties. Each party will ensure that HCPs engaged by such party for purposes of this Agreement abide by all applicable laws in the performance of their duties, and will ensure that completed Test Kits are provided to the Testing Lab (as defined below). Each County is responsible for ensuring that samples are collected, handled, stored, and transferred to the Testing Lab in accordance with lab protocols and requirements.
- 2.5. Personal Protective Equipment.** If Verily is providing on-site support for a County, such County will provide personal protective equipment, as recommended by relevant public health authorities, to Verily Personnel while onsite at the Site; provided that, if mutually agreed between a County and Verily, Verily may provide its own PPE for the first two to four weeks after Program launch at the applicable Site, with no increase to the Exhibit B rates.
- 2.6. Miscellaneous Responsibilities.** For clarity, State CDPH and/or the applicable County is responsible for all activities in connection with the deployment and operation of the Program at the Site other than the Verily Activities expressly described in this Agreement. State CDPH and/or the applicable County’s responsibilities include, without limitation, security, traffic control, site relations, community relations, government relations, and biohazard control (including containment and removal). ~~State and/or~~ The applicable County will provide adequate security to safeguard all of the supplies and materials used in connection with the Program. State CDPH and/or the applicable County will be responsible for operating and maintaining the Site in accordance with federal, state and local laws and regulations.

- 2.7. **County Responsibilities.** The State will provide a copy of this Agreement to participating Counties so Counties are informed of and agree to their obligations as described. Without limiting the foregoing, each County must agree to be bound by the provisions set forth in Section 4.2 and must sign a copy of the data transfer terms and acknowledgment attached to this Agreement as Exhibit A in order to receive Participant Data from Verily.

3. **Research and Data Analytics.**

- 3.1. **Participant Data. Unless otherwise superseded by applicable Federal and/or State law,** The parties acknowledge and agree that Verily will have access to certain Participant information and data, which may include, without limitation, contact information, screener questionnaire responses, test results and other personally identifiable information (collectively, the “**Participant Data**”) as a result of the performance of the Verily Activities, and that the State, the Counties, and other governmental authorities have requested and may request from time to time that Verily provide such Participant Data to State, Counties, and/or such governmental authorities and conduct research and data analytics using such Participant Data, in each case, for purposes of carrying out the legitimate public health mission of such governmental authority, including infectious disease control and prevention (the “**Purpose**”).
- 3.2. **Data Retention. Unless otherwise superseded by applicable Federal and/or State law,** Subject to the terms and conditions of this Agreement, Verily may retain that Participant Data which is necessary for Verily to continue its proper management and administration or to carry out its legal responsibilities.
- 3.3. **Data Delivery.** Verily will deliver Participant Data to State and, subject to Section 2.7, applicable Counties in a format and on a cadence as set forth in the Data Transfer Plan attached hereto as Exhibit F, or as may be mutually agreed by Verily and the applicable recipient of such Participant Data, and in all cases such data transfer will be conducted in a secure manner using encryption.
- 3.4. **Verily’s Data Use. Unless otherwise superseded by applicable Federal and/or State law,** Verily may use Participant Data for performing the Verily Activities, and overall program improvements and administration (including, for example, lab testing quality and kits), and to aid in public health efforts, including generation of aggregate and de-identified data for such purposes. Verily may use data de-identified in accordance with the California Health and Human Services Agency Data De-Identification Guidelines (Sept. 23, 2016) for purposes of developing COVID-19-related products and services. Verily may use Participant contact information to provide information, and the ability to opt into, research opportunities. Verily will otherwise conduct outreach, research, and analytics based on the Participant Data only (a) at the request of State or CDPH, through its authorized representative, (b) at the request of a County, the federal government, or other relevant governmental authorities for the Purpose, in each case, subject to notification to and an opportunity to provide approval by State or CDPH, (c) as required by law, or (d) as otherwise legally authorized by Participants; provided that, in the case of clause (b), if State or CDPH has not provided Verily with approval or rejection within three (3) business days of receiving notice from Verily of such request from County, the federal government, or other relevant governmental authorities, then such request shall be deemed approved. Such outreach, research, and analytics may be requested and conducted during the term of this Agreement or after its expiration or termination until such time as State or CDPH determines that the public health need no longer exists, and such outreach, research, and analytics will be considered to be “Verily Activities” and its retention for such purposes will be permitted under this Agreement and the Business Associate Addendum. Verily will handle collection, maintenance, and deletion of Participant Data in accordance with the terms and conditions of the authorization

form, the privacy policy applicable to the Program, and the attached Business Associate Addendum.

4. Representations and Warranties.

- 4.1.** Each party represents and warrants that it has full power and authority to enter into and fulfill its obligations under this Agreement and to agree to the terms set forth herein. State further represents and warrants that it or the applicable County has obtained and will maintain all necessary and appropriate permissions, authorizations, consents and other rights necessary to perform the State/County Activities, including to use the Participant Data for the Purpose and share Participant Data as contemplated by this Agreement.
- 4.2.** The parties acknowledge and agree that Participant Data (i) is collected and/or will be collected by Verily subject to the terms and conditions set forth in the authorization form, the privacy policy applicable to the Program, copies of which have been made available to the State and CDPH, and the attached Business Associate Addendum, (ii) includes sensitive personally identifiable information, including health information, and such Participant Data must be handled accordingly. To that end, State and CDPH represent, warrant, and covenant that it (a) has read and understood the authorization form and privacy policy applicable to the Program, (b) will use the Participant Data only for the Purpose, consistent with the authorization form and privacy policy applicable to the Program, and for no other purposes, (c) will have and maintain reasonable and appropriate technical, physical and administrative safeguards to protect the Participant Data, (d) will ensure that anyone acting on its behalf is subject to or otherwise provides equivalent or greater protections for the privacy and security of Participant Data as described in this Agreement, and (e) will not otherwise share or disclose Participant Data to any third party or any other governmental agency or authority, except as required by law, and in all cases limited to the Purpose.
- 5. 48-Hour Termination.** Either party may terminate this Agreement on 48 hours' notice to the other party. Section 2.7, Section 3.1, Section 3.2, Section 3.4, Section 4, this Section 5, Section 7, all Data Transfer Terms and Acknowledgements signed by the Counties (Exhibit A - Attachment 1), Section VII.E of Exhibit G, and Exhibit D Section 2 shall survive expiration or termination of this Agreement.
- 6. Additional Terms.** Certain Federal and State Terms are attached hereto as Exhibits as part of the Agreement. Notwithstanding the foregoing or anything contained in the Federal and State Terms, State acknowledges that, in light of the COVID-19 emergency and the urgency of the activities contemplated by this Agreement, Verily may not be able to pass through such terms to its subcontractors. State acknowledges and agrees that any failure by Verily to pass through such terms to subcontractors will not be deemed to be a breach of this Agreement and Verily will not be liable for any such failure.
- 7. Miscellaneous.** All notices to Verily must be sent to verily-counsel@verily.com. All notices to State must be sent to Jennifer.Hogan@CalOES.ca.gov and the CDPH Project Representative. Neither party may assign or transfer its rights or obligations under this Agreement, without the prior written consent of the other party. Verily may perform its activities under this agreement itself or through affiliates or third parties, provided that Verily remains responsible for performance under this Agreement. This Agreement does not create any agency, partnership, or joint venture between the parties. This Agreement sets out all the terms agreed between the parties and supersedes all other agreements between the parties as of the Effective Date relating to its subject matter.

8. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument.

**Exhibit A – Attachment 1
Data Transfer Terms and Acknowledgment**

By signing below, [INSERT COUNTY] (the “**County**”) represents and warrants that it has read and understood the terms set forth in that certain agreement (the “**Agreement**”) between Verily Life Sciences LLC (“**Verily**”) and the State of California Office of Emergency Services (“**State**”), dated [INSERT DATE] and agrees to be bound by the obligations applicable to County set forth therein.

Without limiting the foregoing:

County acknowledges and agrees that Participant Data (as defined in the Agreement) (i) is collected and/or will be collected by Verily subject to the terms and conditions set forth in the authorization form and privacy policy applicable to the Program (as defined in the Agreement), copies of which are available to County upon request, and (ii) includes sensitive personally identifiable information, including health information, and such Participant Data must be handled accordingly. To that end, County represents, warrants, and covenants that it (a) has read and understood the authorization form and privacy policy applicable to the Program, (b) will use the Participant Data only for the Purpose (as defined in the Agreement), consistent with the authorization form and privacy policy applicable to the Program, and for no other purposes, (c) will have and maintain reasonable and appropriate technical, physical and administrative safeguards to protect the Participant Data, (d) will ensure that anyone acting on its behalf is subject to or otherwise provides equivalent or greater protections for the privacy and security of Participant Data as described in the Agreement, and (e) will not otherwise share or disclose Participant Data to any third party or any other governmental agency or authority, except as required by law, and in all cases limited to the Purpose.

County further acknowledges and agrees that Verily is relying on these representations, warranties, and covenants, and that they are a pre-condition to County’s receipt of Participant Data from Verily in connection with the Program.

Acknowledged and Agreed:

[COUNTY]

By:

Name:

Title:

Date:

**Exhibit A - Attachment 2
Existing Sites (Active and Inactive) as of June 15, 2020**

Site Name (usually Locality, State)	Site access	Site type	Mobile unit rotation (does not include rural mobile locations)
Bakersfield, CA	Drive-through only	Fixed	
Bell, CA	Drive-through only	Fixed	
Bieber, CA	Drive-through only	Fixed	
Clearlake, CA	Drive-through only	Mobile	G - Lake County mobile
Daly City, CA	Drive-through and pedestrian	Mobile	F - San Mateo County mobile
Doyle, CA	Drive-through only	Fixed	
East Palo Alto, CA	Drive-through and pedestrian	Mobile	F - San Mateo County mobile
Half Moon Bay, CA	Drive-through and pedestrian	Mobile	F - San Mateo County mobile
Herlong, CA	Drive-through only	Fixed	
Lake Elsinore, CA	Drive-through only	Fixed	
Lakeport, CA	Drive-through only	Mobile	G - Lake County mobile
Long Beach, CA	Drive-through only	Fixed	
Los Angeles (Exposition Park), CA	Drive-through only	Fixed	
Los Banos, CA	Drive-through only	Fixed	
Middletown, CA	Drive-through and pedestrian	Mobile	G - Lake County mobile
Napa, CA	Drive-through only	Fixed	
Oakland (Allen Temple), CA	Drive-through only	Fixed	
Oakland (Elmhurst), CA - PEDESTRIAN ACCESS ONLY	Pedestrian only	Fixed	
Oakland (Henry J Kaiser), CA	Drive-through only	Fixed	
Pescadero, CA	Drive-through only	Fixed	F - San Mateo County mobile
Redondo Beach, CA	Unspecified	Fixed	

Redwood City (North Fair Oaks), CA	Drive-through and pedestrian	Mobile	F - San Mateo County mobile
Sacramento, CA	Drive-through only	Fixed	
Salida, CA	Drive-through only	Fixed	
San Francisco (Fillmore District), CA - PEDESTRIAN ACCESS AVAILABLE	Drive-through and pedestrian	Mobile	H - San Francisco mobile
San Francisco (Tenderloin), CA - PEDESTRIAN ACCESS ONLY	Pedestrian only	Fixed	
San Francisco, CA	Unspecified	Fixed	H - San Francisco mobile
San Jose (PAL Stadium), CA	Drive-through and pedestrian	Fixed	
San Jose (SCC Fairgrounds), CA	Drive-through only	Fixed	
San Mateo, CA	Drive-through only	Mobile	F - San Mateo County mobile
Sherman Oaks, CA	Drive-through only	Fixed	
Stanford, CA	Unspecified	Fixed	
Stockton, CA	Drive-through only	Fixed	
Susanville, CA - Department of Public Health	Drive-through only	Fixed	
Susanville, CA - Lassen Community College	Drive-through only	Fixed	
Van Nuys (Lake Balboa Park), CA	Drive-through only	Fixed	
Westwood, CA	Drive-through only	Fixed	

EXHIBIT B – PAYMENT PROVISIONS

1. INVOICING AND PAYMENT

A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor in accordance with the Rates below.

B. Invoices must include:

Contract Number
Invoice Number
Date of Invoice
Billing and/or performance period covered by invoice (Dates of Service)
Location of Service
Type of Services or Expense (as described in Rates below)
Invoice total
Remittal Address
Contact phone number for invoice questions

C. Contractor shall submit invoices to:

CalOES
3650 Schriever Avenue
Mather, CA 95655
Attn: Jennifer Hogan

D. Should an invoice be disputed, Contractor will correct all disputed items on the invoice and resubmit the invoice as indicated above. Failure to provide and resubmit corrected invoice will result in a delay of payment.

2. BUDGET CONTINGENCY CLAUSE

A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any provisions of this Agreement.

B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to the Contractor to reflect the reduced amount.

3. PROMPT PAYMENT CLAUSE

A. Payment will be made in accordance with, and within the time specified in, the California Prompt Payment Act, Government Code Chapter 4.5, commencing with section 927.

Revised Not to Exceed Amount (Apr 18th to Aug 31st)**Key Assumptions:**

Period Apr 18th - Aug 31st
 # Tests Completed during Period 270,000

	Verily 2 Sites	All Other Sites	Total
Total Tests (est)	36,378	233,622	270,000
Tests w/ Healthcare professionals	36,378	28,583	64,961
Tests w/out Healthcare professionals		205,039	205,039
Tests w/ Spanish speaking covid-positive (est)	163	1,046	1,209
Fees (US\$)			
Cost per test (with HCPs)	\$151	\$151	
# of tests	<u>4,917</u>	<u>3,864</u>	<u>8,781</u>
Sub-total	\$742,467	\$583,464	\$1,325,931
Cost per test (with HCPs)	\$146	\$146	
# of tests	<u>6,946</u>	<u>5,457</u>	<u>12,403</u>
Sub-total	\$1,014,116	\$796,722	\$1,810,838
Cost per test (with HCPs)	\$141	\$141	
# of tests	<u>13,867</u>	<u>10,895</u>	<u>24,762</u>
Sub-total	\$1,955,247	\$1,536,195	\$3,491,442
Cost per test (with HCPs)	\$136	\$136	
# of tests	<u>10,648</u>	<u>8,367</u>	<u>19,015</u>
Sub-total	\$1,448,128	\$1,137,912	\$2,586,040
Cost per test (without HCPs) - first 50k	\$0	\$123	
# of tests	<u>0</u>	<u>31,173</u>	<u>31,173</u>
Sub-total	\$0	\$3,834,279	\$3,834,279
Cost per test (without HCPs) - next 50k	\$0	\$118	
# of tests	<u>0</u>	<u>37,597</u>	<u>37,597</u>
Sub-total	\$0	\$4,436,446	\$4,436,446
Cost per test (without HCPs) - next 100k	\$0	\$113	
# of tests	<u>0</u>	<u>75,238</u>	<u>75,238</u>
Sub-total	\$0	\$8,501,894	\$8,501,894
Cost per test (without HCPs) - 200k to 500k	\$0	\$108	
# of tests	<u>0</u>	<u>61,031</u>	<u>61,031</u>
Sub-total	\$0	\$6,591,348	\$6,591,348
Incremental Cost per test (PWN Spanish)	\$25	\$25	
# of tests	<u>163</u>	<u>1,046</u>	<u>1,209</u>
Sub-total	\$4,075	\$26,150	\$30,225
Operating Costs (US\$)			
<u>San Mateo Events Center Operating Expense (Apr 18th - May 31st)</u>			
Cost per month	\$120,000		
Sub-total	\$172,000		\$172,000
<u>Santa Clara Security Expense</u>			
Cost per week	\$8,500		
Sub-total	\$161,500		\$161,500
Total Est Expenses (Apr 18th to Aug 31st)	\$5,497,533	\$27,444,410	\$32,941,943
<u>Previously Invoiced</u>			
Total Est Expenses (Apr 18th to May 14th)			\$3,474,312
Potential Future Invoices (May 15th to Aug 31st)			\$29,467,631

Notes

Estimated total # of tests based on actuals + estimates based on average of existing sites over the past 2 weeks plus a 10% buffer (as of 6/10).
 San Mateo and Santa Clara sites see approx. 62% of total testing volumes w/ HCPs.

Components of Ongoing Site Costs

<u>Cost Type</u>	<u>Verily 2 Sites</u>	<u>All Other Sites</u>	<u>Details</u>
	<i>(not to exceed pricing)</i>		
Fees excl Healthcare Professionals (per Test)*		\$123	Quest (\$75); PWN (\$13); Baseline incl Consulting / Call Center (\$30); Supplies (\$5)
Fees including Healthcare Professionals (per Test)*	\$151	\$151	All of the above plus Healthcare professionals (HCPs)
PWN Bilingual (per positive test)	\$25	\$25	If spanish language is required to speak to a patient about a positive test, \$25 / test will be added to per test fees
Operating Expenses paid to San Mateo Events Center (per month)	\$120,000	NA	Rent waived by San Mateo Event Center. Cost cover rental equipment, security, Janitorial and other operating fees
Security Vendors (per week for Santa Clara Site)	\$8,500	NA	24 hour security at the Santa Clara site

* Fees (per Test) to be based on Tiered pricing schedule

Fees (per Test) Tiered Pricing

* Pricing includes set-up costs, launch coordination costs for new sites, and call center.

<u>Tier (# of Cum Tests)</u>	<u>Volume</u>	<u>Baseline Fee/Test</u>	<u>Total Fee (per Test) excluding HCPs</u>	<u>Total Fee (per Test) including HCPs</u>
1-50k	50,000	\$30.00	\$123.00	\$151.00
50-100k	50,000	\$25.00	\$118.00	\$146.00
100k-200k	100,000	\$20.00	\$113.00	\$141.00
200k-500k	300,000	\$15.00	\$108.00	\$136.00
500k+		\$10.00	\$103.00	\$131.00

San Mateo Event Center Expenses

* Pricing includes set-up costs, launch coordination costs for new sites, and call center.

<u>Expense Category</u>	<u>15-day Cost</u>	<u>30-day Cost</u>
Equipment Charges	\$6,960	\$13,920
Labor Charges (Janitorial, Event Mgmt, Facilities PM)	\$26,350	\$52,700
Security	\$18,667	\$37,334
Outside Equipment Rental	\$6,078	\$12,156
Miscellaneous / Contingency	\$1,945	\$3,891

Totals	\$60,000	\$120,000
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EXHIBIT D – SPECIAL PROVISIONS

1. **Insurance.** Verily shall comply with all requirements outlined in the (A) General Provisions Applying to All Policies section and (B) Contract Insurance Requirements outlined in this section. No payments will be made under this contract until Verily fully complies with all requirements.

A. General Provisions Applying to All Policies

- 1..1. Coverage Term – Coverage needs to be in force for the complete term of the contract. If insurance expires during the term of the contract, a new certificate must be received by the State at least thirty (30) days prior to the expiration of this insurance. Any new insurance must comply with the original contract terms of the contract.
- 1..2. Policy Cancellation or Termination & Notice of Non-Renewal – Verily is responsible to notify the State within thirty (30) business days of any cancellation, non-renewal or material change that affects required insurance coverage in accordance with policy provisions. New certificates of insurance are subject to the approval of the Department of General Services and the Verily agrees no work or services will be performed prior to obtaining such approval. In the event Verily fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- 1..3. Premiums, Assessments and Deductibles – Verily is responsible for any premiums, policy assessments, deductibles or self-insured retentions contained within their insurance program.
- 1..4. Primary Clause – Any required insurance contained in this contract shall be primary, and not excess or contributory, to any other insurance carried by the State.
- 1..5. Insurance Carrier Required Rating – All insurance companies must carry an AM Best rating of at least “A–” with a financial category rating of no lower than VII. Verily will provide a Certificate of Insurance for its E&O coverage.
- 1..6. Endorsements – Any required endorsements requested by the State must be physically attached to all requested certificates of

insurance and not substituted by referring to such coverage on the certificate of insurance.

- 1..7. Inadequate Insurance – Inadequate or lack of insurance does not negate Verily's obligations under the contract.
- 1..8. Available Coverages/Limits – All coverage and limits available to Verily shall also be available and applicable to the State.
- 1..9. Satisfying an SIR - All insurance required by this contract must allow the State to pay and/or act as Verily's agent in satisfying any self-insured retention (SIR). The choice to pay and/or act as Verily's agent in satisfying any SIR is at the State's discretion.
- 1..10. Use of Subcontractors - In the case of Verily's utilization of subcontractors to complete the contracted scope of work, Verily shall ensure that subcontractors carry appropriate levels of insurance.

B. Contract Insurance Requirements. Verily shall display evidence of the following on a certificate of insurance evidencing the following coverages:

- 1..11. Commercial General Liability – Verily shall maintain general liability on an occurrence form with limits not less than \$5,000,000 per occurrence for bodily injury and property damage liability combined with a \$5,000,000 annual policy aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to Verily's limit of liability.

The policy must name The State of California, its officers, agents, and employees as additional insured, but only with respect to work performed under the contract.

- 1..12. Automobile Liability – Verily shall maintain business automobile liability insurance for limits not less than \$1,000,000 combined single limit. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles.

The policy must name The State of California, its officers, agents, and employees as additional insured, but only with respect to work performed under the contract.

- 1..13. Workers Compensation and Employers Liability – Verily shall maintain statutory worker’s compensation and employer’s liability coverage for all its employees who will be engaged in the performance of the Contract. In addition, employer’s liability limits of \$1,000,000 are required. By signing this contract, Verily acknowledges compliance with these regulations. [A Waiver of Subrogation or Right to Recover endorsement in favor of the State of California must be attached to certificate.]
- 1..14. Professional Liability Errors and Omissions Insurance - Verily shall maintain Professional Liability Errors and Omissions insurance appropriate to Verily’s profession and work hereunder, with limits not less than \$6,000,000 per claim and in the aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Verily in this agreement and shall include, but not be limited to, Cyber liability and claims involving privacy liability and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

If Policy is written on a claims-made basis provide the following:
The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

- C. **State Coverage.** In accordance with Government Code section 11007.4, the State of California has elected to be self-insured for liability exposures. Under this form of insurance, the State and its employees acting in the course and scope of their employment are insured for tort liability arising out of official State business. All claims against the State of California based on tort liability should be presented as a government claim to the Government Claims Program, P.O. Box 989052 MS 414, West Sacramento, CA 95798-9052. (Gov. Code section 900, et. seq.) Internet link: <http://www.dgs.ca.gov/orim/Programs/GovernmentClaims.aspx>.

2. **Indemnification; Limitation of Liability; Disclaimer of Warranties; Emergency Services**

2.1 Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.

2.2 NEITHER PARTY WILL HAVE ANY LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT FOR: THE OTHER PARTY’S LOST

REVENUES; INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES (WHETHER OR NOT FORESEEABLE OR CONTEMPLATED BY THE PARTIES AT THE EFFECTIVE DATE); OR EXEMPLARY OR PUNITIVE DAMAGES

2.3 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, VERILY DOES NOT MAKE ANY REPRESENTATION OR EXTEND ANY WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY.

2.4 The parties acknowledge and agree that Verily is a private business providing emergency services at the request of the State. To the extent applicable, Verily may be subject to certain immunities under the California Emergency Services Act.

2.5 The Declaration pursuant to section 319F-3 of the Public Health Service Act (42 U.S.C. 247d-6d) to provide liability immunity for activities related to medical countermeasures against COVID-19 may apply to activities conducted pursuant to this Agreement.

3. **Incorporation by Reference. The following documents are not attached, but are incorporated herein and made a part hereof by this reference. The State will maintain on file all documents referenced herein.**

(1). The May 11, 2020, Request for Proposal (“RFP”) from Verily for Rural California COVID-19 PCR Testing

(2). The May 14, 2020, Updated RFP from Verily.

4. **ADA compliance.** Contractor warrants that it is in compliance with the Americans with Disabilities Act (ADA) and all regulations issued thereunder and that it will comply in all respects with the provisions of the Act and regulations thereunder. Contractor shall advise the State of any exemptions, exceptions to or waivers from this statutory requirement; Contractor shall notify the State of ADA-related accessibility and other accommodating ADA-related arrangements. The State shall notify Contractor in advance of any special accommodations needed, when such needs are known by the State. Contractor agrees to hold harmless the State, volunteers and employees from any and all claims arising from ADA violations within the scope and responsibility of the Contractor and its activities.

5. **Fair wages.** Contractor warrants that all employees performing work under this agreement are paid no less than the minimum [Trainee Wage](#) set by the Employment Training Panel for the county in which the work is performed, or the applicable federal, state, or local minimum wage, whichever is greater. Healthcare benefits valued at up to \$2.50 per hour can be used to meet this wage requirement.

6. Fringe benefits. Contractor shall make fringe benefit contributions on behalf of each employee performing work under this agreement that are no less than the fringe benefit contributions required by the most recent Service Contract Act area-wide wage determination issued by the United States Secretary of Labor for the locality in which the work is performed.
7. No misclassification. Contractor warrants that individuals performing work under the contract will not be misclassified as independent contractors.
8. Paid sick leave. Contractor warrants that it will comply with all applicable federal, state, and local laws pertaining to paid sick leave, including any anti-retaliation provisions contained in such laws.
9. Workplace safety and health. Contractor warrants that it will comply with all applicable safety and health requirements, including the Aerosol Transmissible Diseases Standard, 8 CCR § 5199, and applicable Cal/OSHA guidance. Contractor further warrants that it will comply with Labor Code sections 6310 and 6311 pertaining to protection of employees who file complaints or refuse to work in the face of hazardous conditions.
10. Labor peace. To protect the State's proprietary and economic interests, as well as the public interest, in providing lodging for COVID-19 response efforts without interruption due to the economic effects of a labor dispute, Contractor shall enter into a labor peace agreement with any organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and which requests a labor peace agreement. The labor peace agreement shall include a binding and enforceable provision(s) prohibiting the organization and its members from engaging in the picketing, work stoppages, boycotts, or any other economic interference for the duration of the labor peace agreement, which must include the entire term of this agreement. Nothing in this paragraph shall be construed as requiring Contractor to change terms and conditions of employment for its employees, recognize a labor organization as the bargaining representative for its employees, adopt any particular recognition process, or enter into a collective bargaining agreement with a labor organization.
11. Priority for unemployed workers. When hiring any new employees to perform work under the contract, Contractor shall give any preference to any applicant who is currently unemployed, who is otherwise qualified.



COVID-19 Baseline Data



Data Transfer Plan

SPONSOR NAME	Verily Life Sciences, LLC
Project	COVID-19 Baseline Screening + Lab Results
TYPE OF DATA	Screeener Data and Lab Results
DATE APPROVED	20-MAY-2020
VERSION	3.0



COVID-19 Baseline Data

1. CONTACT INFORMATION

Verily Clinical Data Manager	Kelley Abad
Address	
Email	Kelleyabad@verily.com

Verily Study Statistician	David Miller
Address	
Email	Davepmiller@verily.com

2. TRANSFER SPECIFICATIONS

Data Sources	Screener Data and Lab Data
Method of Transfer	Secure transfer to Google Cloud Storage
Media/File Format	CSV file
Transfer Type	Cumulative
Frequency	Daily

3. DATA FORMAT

participant_id	Participant ID	Numeric	
result_updated_time	Result updated timestamp	Numeric	
zip_code	PWN Zipcode	Numeric	
pwn_id	PWN Identifier	Numeric	
customer_first_name	First Name	Character	
customer_last_name	Last Name	Character	
customer_birth_date	Birth Date	Numeric	
customer_phone	Phone Number	Numeric	
customer_email	Email	Character	
customer_address_line	Address	Character	
customer_address_line2	Address Line 2	Character	
customer_address_city	City	Character	



COVID-19 Baseline Data

customer_address_state	State	Character	
sample_collection_time	Sample Collection Time	Numeric	
overall_order_lab_code	Lab Order	Character	39433 3944 39448
overall_result_lab_code	Lab Result	Character	86028514 86028538 86028546
overall_result_lab_name	Lab Name	Character	SARS CoV 2 RNA, RT PCR OVERALL RESULT: SARS CoV 2 RNA
overall_result	Overall Result	Character	DETECTED NOT DETECTED INCONCLUSIVE INVALID
overall_result_status	Result Status	Character	final corrected
pan_sars_result	SARS Result	Character	NEGATIVE POSITIVE
pan_sars_result_status	SARS Result Status	Character	final
cov2_result	COV2 Result	Character	NEGATIVE POSITIVE
cov2_result_status	COV2 Result Status	Character	final
CVCONT	In the past 14 days, have you had contact (of more than 15 minutes, at less than 6 feet distance) with someone who has a confirmed case of Coronavirus (COVID-19)?	Character	Yes No
CVTRAV_China	Within the past 14 days, have you traveled to China?	Character	Yes No
CVTRAV_Iran	Within the past 14 days, have you traveled to Iran?	Character	Yes No
CVTRAV_South_Korea	Within the past 14 days, have you traveled to South Korea?	Character	Yes No
CVTRAV_Europe	Within the past 14 days, have you traveled to Europe?	Character	Yes No
CVTRAV_None_of_these	Traveled to None of the countries	Character	Yes No
CVWORK	Do any of the following describe your work setting? (Select all that apply)	Character	Yes No Null (v2)
CVEMPL_MEDICAL	Healthcare Facility	Character	Yes No Null (v1)
CVEMPL_PRISON	Prison	Character	Yes No Null (v1)
CVEMPL_FIRST_RESPONDER	First Responder	Character	Yes No Null (v1)



COVID-19 Baseline Data

CVEMPL_NONE_OF_THE_ABOVE	None of the above	Character	Yes No
CVSX_Fever	Fever	Character	Yes No
CVSX_Coughing	Coughing	Character	Yes No
CVSX_Shortness_of_breath	Shortness of breath	Character	Yes No
CVSX_None_of_these	None of these	Character	Yes No <i>NOTE: none of first 3 symptoms for v1, v2, and v3</i>
CVSX_Chills	Chills	Character	Yes No null (v1, v2, v3)
CVSX_Repeated_shaking_and_chills	Repeated Shaking and Chills	Character	Yes No null (v1, v2, v3)
CVSX_Muscle_pain	Muscle Pain	Character	Yes No null (v1, v2, v3)
CVSX_Headache	Headache	Character	Yes No null (v1, v2, v3)
CVSX_Sore_throat	Sore Throat	Character	Yes No null (v1, v2, v3)
CVSX_Recent_loss_of_sense_of_smell_or_taste	Recent loss of sense of smell or taste	Character	Yes No null (v1, v2, v3)
CVSX_vomiting_and_diarrhea	Vomiting and Diarrhea	Character	Yes No null (v1, v2, v3, v4)
CVDAYS	Days since symptoms started	Numeric	null (v1, v2, v3, v4)
sx_onset_date	Date of symptom date (based on date of screener minus self-reported days since symptoms started)	Numeric	null (v1, v2, v3, v4)
CVMANG	In general, do you currently have any health conditions that you manage (such as diabetes, asthma, or high blood pressure)?	Character	Yes No
CVCOND_chronic_lung_disease	Chronic lung disease	Character	Yes No
CVCOND_congestive_heart_failure	Congestive heart failure	Character	Yes No
CVCOND_hemodialysis	Hemodialysis	Character	Yes No
CVCOND_i_currently_under_chemotherapy_or_radiation_for_cancer	Currently under chemotherapy or radiation for cancer	Character	Yes No



COVID-19 Baseline Data

CVCOND_immune_system_suppression	Immune system suppression	Character	Yes No
CVCOND_obesity_with_a_bmi_greater_40	Obesity	Character	Yes No
CVCOND_other_cardiovascular_disease	Other cardiovascular disease	Character	Yes No
CVCOND_type_1_diabetes	Type 1 diabetes	Character	Yes No
CVCOND_type_2_diabetes	Type 2 diabetes	Character	Yes No
CVCOND_chronic_renal_disease	Chronic renal disease	Character	Yes No
CVCOND_chronic_hepatic_disease	Chronic hepatic disease	Character	Yes No
CVCOND_other	Other	Character	Yes No
CVCOND_none_of_these	None of these	Character	Yes No
CVPREG	Are you currently pregnant?	Character	Yes No Does_not_apply_to_me
age	Age	Numeric	
sex	Sex		male female intersex
race	Race	Character <i>(codes separated by slashes when more than one race is checked)</i>	American Indian or Alaska Native Asian Black or African American Hawaiian or Other Pacific Islander White Other Not Reported (v1-v4)
hispanic	Ethnicity		YES NO
home_state	Home state	Character	
site	Verily Site Code	Character	
site_name	Verily Site Name	Character	
occupation	Occupation	Character	
california_timestamp	Timestamp	Numeric	
screeener_version	Screeener version	Character	v1 v2 v3 v4 v5
county	County of Residence	Character	
comment	Comment	Character	



COVID-19 Baseline Data

site_county	County of Site	Character	
site_state	State of Site	Character	

4. DATA TRANSFER METHOD

- 4.1. Data will be transferred in CSV format and uploaded to Google Cloud Storage.
 - 4.1.1. Technical instructions will be provided from Verily to County to grant access to the Verily-provided Google Cloud Storage (CGS) bucket.
 - 4.1.2. Verily will provide direct URL to GCS bucket location.

5. DATA TRANSFER FREQUENCY

- 5.1. Data will be transferred as specified in Section 4 on a daily basis.



COVID-19 Baseline Data

REVISION HISTORY			
VERSION	DATE	REVISION DETAILS	COMPLETED BY
1.0	27-MAR-2020	Initial Version	kelleyabad@
2.0	10-APR-2020	Section 3. Data Format updated	kelleyabad@
3.0	20-MAY-2020	Section 3 Data Format updated to include additional symptoms, race and ethnicity. Removed not applicable program-related data variables	kelleyabad@

EXHIBIT G - HIPAA BUSINESS ASSOCIATE ADDENDUM**I. Recitals**

- A.** The underlying contract (Agreement), to which this HIPAA Business Associate Addendum is attached to and made a part of, has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), 42 U.S.C. section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations"). Terms capitalized but not defined herein shall have the meaning given in the Agreement.
- B.** The California Department of Public Health ("CDPH") wishes to disclose to Business Associate certain information pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI"), including protected health information in electronic media ("ePHI"), under federal law, and personal information ("PI") under state law.
- C.** As set forth in the Agreement, Contractor, here and after, is the Business Associate of CDPH acting on CDPH's behalf and provides services, arranges, performs or assists in the performance of functions or activities on behalf of CDPH and creates, receives, maintains, transmits, uses or discloses PHI and PI. CDPH and Business Associate are each a party to the Agreement and are collectively referred to as the "parties."
- D.** The purpose of this Addendum is to protect the privacy and security of the PHI and PI that may be created, received, maintained, transmitted, used or disclosed pursuant to the Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act and the HIPAA regulations, including, but not limited to, the requirement that CDPH must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act.
- E.** The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

II. Definitions

- A.** Breach shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- B.** Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- C.** Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- D.** Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C section 17921 and implementing regulations.
- E.** Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR part 160.103.

- F. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR section 160.103.
- G. Privacy Rule shall mean the HIPAA Regulation that is found at 45 CFR Parts 160 and 164.
- H. Personal Information shall have the meaning given to such term in California Civil Code sections 1798.3 and 1798.29.
- I. Protected Health Information means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR part 160.103.
- J. Required by law, as set forth under 45 CFR part 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- K. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- L. Security Incident means the successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, or confidential data that is essential to the ongoing operation of Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- M. Security Rule shall mean the HIPAA regulation that is found at 45 CFR Parts 160 and 164.
- N. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. section 17932(h), any guidance issued pursuant to such Act and the HIPAA regulations.

III. Terms of Agreement

A. Permitted Uses and Disclosures of PHI by Business Associate

Permitted Uses and Disclosures. Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in the Agreement, for, or on behalf of CDPH, including but not limited to contacting Participants to arrange for testing and returning the results of testing to Participants. Any such use or disclosure must, to the extent practicable, be limited to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, and the HIPAA regulations.

1. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Addendum, Business Associate may:
 - a. **Use and Disclosure for Management and Administration and Public Health Purposes.** Use and disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that such disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware that the confidentiality of the information has been breached. For clarity, the Services performed for CDPH, as well as the management and administration of those services, and use of PHI for public health purposes, involve the processing of PHI to produce analytics and research that is anticipated to be of use to public health authorities and Verily in their conduct of the testing program.
 - b. **Provision of Data Aggregation Services.** Use PHI to provide data aggregation services to CDPH. Data aggregation means the combining of PHI created or received by Business Associate on behalf of CDPH with PHI received by Business Associate in its capacity as Business Associate of another covered entity, to permit data analyses that relate to the successful operation and continuous improvement of the Services conducted for CDPH.
 - c. **De-identification of PHI.** Business Associate may use PHI to create de-identified health information. Such data de-identification shall be performed in accordance with the California Health and Human Services Agency Data De-Identification Guidelines (Sept. 23, 2016), in consultation with CDPH. Business Associate may use de-identified data for purposes of developing COVID-19-related products and services.
 - d. **Contact for Research; Research and Analytics.** Business Associate may use Participant contact information to contact Participants to obtain their authorization to use and disclose such Participants' PHI for research purposes and to conduct further outreach to such Participants based on the public health need for rapid recruitment into clinical trials and other research; Business Associate may base such outreach on the results of a Participant's COVID-19 test results and other Participant data and may conduct research and analytics based on Participant Data: (i) if directed by CDPH, (ii) at the request of a County, the federal government, or other relevant governmental authorities for such purpose if approved or deemed approved by CDPH, (iii) as required by law, or (iv) as otherwise legally authorized by Participants. Business Associate may further use or disclose PHI for public health purposes to the extent such activities would be permitted as a disclosure for public health purposes under 45 C.F.R. § 164.512(b)(1).

B. Prohibited Uses and Disclosures

1. Business Associate shall not disclose PHI about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. section 17935(a) and 45 CFR section 164.522(a).

2. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CDPH and as permitted by 42 U.S.C. section 17935(d)(2).

C. Responsibilities of Business Associate

Business Associate agrees:

1. **Nondisclosure.** Not to use or disclose PHI other than as permitted or required by the Agreement or as required by law.
2. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of CDPH, in compliance with 45 CFR parts 164.308, 164.310 and 164.312, and to prevent use or disclosure of PHI other than as provided for by the Agreement. Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR part 164, subpart C, in compliance with 45 CFR part 164.316. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section 3, Security, below.
3. **Security.** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
 - a. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of CDPH under the Agreement.
 - b. In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of the Agreement.
 - c. Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with CDPH.

D. Mitigation of Harmful Effects. To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.

E. Business Associate's Agents and Subcontractors.

1. To enter into written agreements with any agents, including subcontractors and vendors, to whom Business Associate provides PHI or PI received from or created or received by Business Associate on behalf of CDPH, that impose the restrictions and conditions on such agents, subcontractors and vendors that apply to Business Associate with respect to such PHI and PI under this Addendum that comply with all applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations.

Notwithstanding the foregoing, CDPH agrees that disclosures of PHI or PI by Business Associate to entities that are performing treatment activities, such as performance of clinical laboratory services, shall not require such an agreement.

2. Business Associate shall comply with 45 CFR section 164.504(e)(1)(ii) and any other applicable provision of HIPAA with respect to a material breach or violation by its subcontractor.

F. Availability of Information to CDPH and Individuals. To provide access and information:

1. To provide access as CDPH may require, and in the time and manner designated by CDPH (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to CDPH (or, as directed by CDPH), to an Individual, in accordance with 45 CFR section 164.524. Designated Record Set means the group of records maintained for CDPH that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for CDPH health plans; or those records used to make decisions about individuals on behalf of CDPH. Business Associate shall use the forms and processes developed by CDPH for this purpose and shall respond to requests for access to records transmitted by CDPH within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
2. If Business Associate maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Business Associate shall provide such information in an electronic format to enable CDPH to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e).
3. If Business Associate receives data from CDPH that was provided to CDPH by the Social Security Administration, upon request by CDPH, Business Associate shall provide CDPH with a list of all employees, contractors and agents who have access to the Social Security data, including employees, contractors and agents of its subcontractors and agents.

G. Amendment of PHI. To make any amendment(s) to PHI that CDPH directs or agrees to pursuant to 45 CFR section 164.526, in the time and manner designated by CDPH.

H. Internal Practices. To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from CDPH, or created or received by Business Associate on behalf of CDPH, available to the Secretary in a time and manner designated by the Secretary, for purposes of determining CDPH's compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Business Associate, Business Associate shall so certify to CDPH and shall set forth the efforts it made to obtain the information.

I. Documentation of Disclosures. To document and make available to CDPH or (at the direction of CDPH) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 CFR part 164.528 and 42 U.S.C. section 17935(c). If Business Associate maintains electronic health records for CDPH as of January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after January 1, 2014. If Business Associate acquires electronic health

records for CDPH after January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.

J. Breaches and Security Incidents. During the term of the Agreement, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any actual, successful security breach, and to take the following steps:

1. **Notice to CDPH.** (1) To notify CDPH **promptly, without unreasonable delay, by telephone call plus email or fax** upon the discovery of an actual, successful breach of unsecured PHI or PI in electronic media or in any other media if the PHI or PI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon the discovery of a security incident that involves data provided to CDPH by the Social Security Administration. (2) To notify CDPH **promptly, without unreasonable delay, by email or fax** of the discovery of any actual, successful security incident, intrusion or unauthorized access, use or disclosure of PHI or PI in violation of the Agreement and this Addendum. A breach shall be treated as discovered by Business Associate as of the first day on which the breach is, as determined by an internal investigation, known to any person (other than the person committing the breach) who is an employee, officer or other agent of Business Associate.

Notice without unreasonable delay shall be provided to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the CDPH ITSD Service Desk. Notice shall be made using the "CDPH Privacy Incident Report" form, including all information known at the time. Business Associate shall use the most current version of this form, which is posted on the CDPH Privacy Office website (<https://www.cdph.ca.gov>).

Upon discovery of an actual successful breach or security incident, intrusion or unauthorized access, use or disclosure of PHI or PI, Business Associate shall take:

- a. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
 - b. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
2. **Investigation and Investigation Report.** To immediately investigate such security incident, breach, or unauthorized access, use or disclosure of PHI or PI. Business Associate shall cooperate in good faith with CDPH in the investigation of any Breach or Security Incident. CDPH preserves the right to participate in the investigation of a security incident involving its data or conduct its own independent investigation, and Business Associate shall cooperate fully in such investigations. Within 72 hours of the discovery, Business Associate shall submit an updated "CDPH Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Information Security Officer.
 3. **Complete Report.** To provide a complete report of the investigation to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Information

Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the “CDPH Privacy Incident Report” form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If CDPH requests information in addition to that listed on the “CDPH Privacy Incident Report” form, Business Associate shall make reasonable efforts to provide CDPH with such information. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated “CDPH Privacy Incident Report” form. CDPH will review and approve the determination of whether a breach occurred and individual notifications are required, and the corrective action plan.

4. **Notification of Individuals.** If the cause of a breach of PHI or PI is attributable to Business Associate or its subcontractors, agents or vendors, Business Associate shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in California Civil Code section 1798.29 and 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days. The CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Information Security Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.
5. **Responsibility for Reporting of Breaches.** If the cause of a breach of PHI or PI is attributable to Business Associate or its agents, subcontractors or vendors, Business Associate is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured PHI involves more than 500 residents of the State of California or its jurisdiction, Business Associate shall notify the Secretary of the breach immediately upon discovery of the breach. If Business Associate has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to CDPH in addition to Business Associate, Business Associate shall notify CDPH, and CDPH and Business Associate may take appropriate action to prevent duplicate reporting. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 1, above.
6. **CDPH Contact Information.** To direct communications to the above referenced CDPH staff, the Business Associate shall initiate contact as indicated herein. CDPH reserves the right to make changes to the contact information below by giving written notice to the Business Associate. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

CDPH Program Contract Manager	CDPH Privacy Officer	CDPH Information Security Officer
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer Privacy Office, c/o Office of Legal Services California Department of Public Health	Chief Information Security Officer Information Security Office California Department of Public Health P.O. Box 997413, MS 6302

	1415 L Street, 5 th Floor Sacramento, CA 95814 Email: privacy@cdph.ca.gov Telephone: (877) 421-9634	Sacramento, CA 95899-7413 Email: cdphiso@cdph.ca.gov Telephone: IT Service Desk (916) 440-7000 or (800) 579-0874
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K. *Due Diligence.* Business Associate shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Addendum and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Addendum.

L. *Sanctions and/or Penalties.* Business Associate understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Business Associate may result in the imposition of sanctions and/or penalties on Business Associate under HIPAA, the HITECH Act and the HIPAA regulations.

IV. Obligations of CDPH

CDPH agrees to:

A. *Notice of Privacy Practices.* Provide Business Associate with the Notice of Privacy Practices that CDPH produces in accordance with 45 CFR section 164.520, as well as any changes to such notice.

B. *Permission by Individuals for Use and Disclosure of PHI.* Provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

C. *Notification of Restrictions.* Notify Business Associate of any restriction to the use or disclosure of PHI that CDPH has agreed to in accordance with 45 CFR section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

D. *Requests Conflicting with HIPAA Rules.* Not request Business Associate use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by CDPH.

V. Audits, Inspection and Enforcement

A. If Business Associate is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Addendum, Business Associate shall notify CDPH and provide CDPH with a copy of any PHI or PI that Business Associate provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI or PI to the Secretary. Business Associate is responsible for any civil penalties assessed due to an audit or investigation of Business Associate, in accordance with 42 U.S.C. section 17934(c).

VI. *Requests for CDPH PHI or PI by Third Parties.* Business Associate and its employees, agents, or subcontractors shall promptly transmit to the CDPH Program Contract Manager all requests for disclosure of any CDPH PHI or PI requested by third parties to the agreement between Business Associate and CDPH (except from an Individual for an accounting of disclosures of the individual's personal information pursuant to applicable state or federal law),

including but not limited to, requests under the California Public Records Act, subpoenas, or court orders, unless prohibited from doing so by applicable state or federal law.

VII. Termination

- A. *Term.*** The Term of this Addendum shall commence as of the effective date of this Addendum and shall extend beyond the termination of the Agreement and shall terminate when all the PHI provided by CDPH to Business Associate, or created or received by Business Associate on behalf of CDPH, is destroyed or returned to CDPH, in accordance with 45 CFR part 164.504(e)(2)(ii)(J).
- B. *Termination for Cause by CDPH.*** In accordance with 45 CFR part 164.504(e)(1)(ii), upon CDPH's knowledge of a material breach or violation of this Addendum by Business Associate, CDPH shall:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Agreement if Business Associate does not cure the breach or end the violation within the time specified by CDPH; or
 2. Immediately terminate the Agreement if Business Associate has breached a material term of this Addendum and cure is not possible.
- C. *Termination for Cause by Business Associate.*** In accordance with 42 U.S.C. section 17934(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Business Associate knows of a material breach or violation by CDPH of this Addendum, it shall take the following steps:
1. Provide an opportunity for CDPH to cure the breach or end the violation and terminate the Agreement if CDPH does not cure the breach or end the violation within the time specified by Business Associate; or
 2. Immediately terminate the Agreement if CDPH has breached a material term of the Addendum and cure is not possible.
- D. *Judicial or Administrative Proceedings.*** CDPH may terminate the Agreement if Business Associate is found guilty of a criminal violation of HIPAA. CDPH may terminate the Agreement if a finding or stipulation that Business Associate has violated any requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which Business Associate is a party or has been joined.
- E. *Effect of Termination.*** Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from CDPH, or created, maintained, or received by Business Associate on behalf of CDPH, shall:
1. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 2. Return to CDPH or destroy the remaining PHI that the Business Associate still maintains in any form;
 3. Continue to use appropriate safeguards and extend the protections of this Addendum to the PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
 4. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at Section III.A, above, which applied prior to termination; and

5. Return to CDPH or destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

If return or destruction is not feasible, Business Associate shall notify CDPH of the conditions that make the return or destruction infeasible, and CDPH and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

VIII. Miscellaneous Provisions

- A. **Disclaimer.** CDPH makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon CDPH's request, Business Associate agrees to promptly enter into negotiations with CDPH concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. CDPH may terminate the Agreement upon thirty (30) days written notice in the event:
 1. Business Associate does not promptly enter into negotiations to amend this Addendum when requested by CDPH pursuant to this Section; or
 2. Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that CDPH in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement, available to CDPH at no cost to CDPH to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CDPH, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- D. **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than CDPH or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. **Order of Precedence.** With respect to information privacy and security requirements for all PHI received from CDPH, or created, maintained, or received by Business Associate on behalf of CDPH, the terms and conditions of this Addendum shall take precedence

over any conflicting terms or conditions set forth in any other part of the agreement between Business Associate and CDPH, including Exhibit A (Scope of Work), all other exhibits and any other attachments, and shall prevail over any such conflicting terms or conditions.

- F. *Interpretation.*** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations.
- G. *Regulatory References.*** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- H. *Survival.*** The respective rights and obligations of Business Associate under Section VII.E of this Addendum shall survive the termination or expiration of the Agreement.
- I. *No Waiver of Obligations.*** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

Attachment A
Business Associate Data Security Requirements

I. Personnel Controls

- A. Employee Training.** All of the Business Associate's workforce members (workforce member) who assist in the performance of functions or activities on behalf of CDPH, or access or disclose CDPH PHI or PI must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification or electronic equivalent, indicating the workforce member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination. Business Associate shall provide CDPH with its employee's certifications within five (5) business days of a request by CDPH for the employee's certifications.
- B. Employee Discipline.** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- C. Confidentiality Statement.** All persons that will be working with CDPH PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to CDPH PHI or PI. The statement must be renewed annually. Business Associate shall retain each workforce member's written confidentiality statement for CDPH inspection for a period of six (6) years following contract termination.
- D. Workforce Member Assessment.** Before a member of the Contractor's workforce may access CDPH PHI or PI, Contractor must ensure that all workforce members that will have access to CDPH PCI have been assessed to assure that there is no indication that the workforce member may present a risk to the security or integrity of CDPH PHI or PI. Contractor shall retain each workforce member's assessment documentation, whether in physical or electronic format, for a period of three (3) years following contract termination.

II. Technical Security Controls

- A. Workstation/Laptop encryption.** All workstations and laptops that process and/or store CDPH PHI or PI must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the CDPH Information Security Office.
- B. Server Security.** Servers containing unencrypted CDPH PHI must have sufficient administrative, physical, and technical controls in place to protect that PHI, based upon a risk assessment/system security review.
- C. Minimum Necessary.** Only the minimum necessary amount of CDPH PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- D. Removable media devices.** All electronic files that contain CDPH PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.

- E. **Antivirus software.** All workstations and laptops that process and/or store CDPH PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- F. **Patch Management.** All workstations, laptops and other systems that process and/or store CDPH PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations.
- G. **User IDs and Password Controls.** All users must be issued a unique user name for accessing CDPH PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Two-factor authentication is used. Passwords must be changed if revealed or compromised.
- H. **Data Destruction.** When no longer needed, all CDPH PHI or PI must be wiped by deleting the encryption key.
- I. **System Timeout.** The system providing access to CDPH PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- J. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for CDPH PHI or PI, or which alters CDPH PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If CDPH PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least three (3) years after occurrence.
- K. **Access Controls.** The system providing access to CDPH PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.

- L. **Transmission encryption.** All data transmissions of CDPH PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI or PI in motion such as website access, file transfer, and E-Mail.
- M. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting CDPH PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

III. Audit Controls

- A. **System Security Review.** All systems processing and/or storing CDPH PHI or PI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
- B. **Log Reviews.** All systems processing and/or storing CDPH PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
- C. **Change Control.** All systems processing and/or storing CDPH PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

IV. Business Continuity / Disaster Recovery Controls

- A. **Emergency Mode Operation Plan.** Business Associate must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic CDPH PHI or PI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under the Agreement for more than 24 hours.
- B. **Data Backup Plan.** Business Associate must have established documented procedures to backup CDPH PHI to maintain retrievable exact copies of CDPH PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore CDPH PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of CDPH data.

V. Paper Document Controls

- A. **Supervision of Data.** CDPH PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by a workforce member authorized to access the information. CDPH PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- B. **Escorting Visitors.** Visitors to areas where CDPH PHI or PI is contained shall be escorted and CDPH PHI or PI shall be kept out of sight while visitors are in the area.
- C. **Confidential Destruction.** CDPH PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.

- D. *Removal of Data.*** CDPH PHI or PI must not be removed from the environments, systems, or equipment that Verily (Google) controls except with express written permission of CDPH.
- E. *Faxing.*** Faxes containing CDPH PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
- F. *Mailing.*** Mailings of CDPH PHI or PI shall be sealed and secured from damage or inappropriate viewing of PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of CDPH PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of CDPH to use another method is obtained.