



February 4, 2021

The Honorable Board of Supervisors
County of Alameda
1221 Oak Street
Oakland, CA 94612

SUBJECT: APPROVE THE STANDARD SERVICES AGREEMENT WITH PRIMARY DIAGNOSTICS, INC. TO PROVIDE SOFTWARE FOR COVID-19 VACCINE APPOINTMENT SCHEDULING SYSTEM AND RELATED TECHNICAL SUPPORT

Dear Board Members:

RECOMMENDATIONS

- A. Approve the Standard Services Agreement (Procurement Contract No. 21725) with Primary Diagnostics, Inc. (Principal: Andrew Kobylinski; Location: San Francisco), to provide software for COVID-19 vaccine appointment scheduling system and related technical support, for the contract period of 2/1/21 to 4/30/21 in the amount not to exceed \$500,000;
- B. Adopt a Resolution to waive the County's competitive procurement process for Primary Diagnostics, Inc. with respect to this contract due to the urgent need for this service and unique aspects of the software platform;
- C. Delegate Authority to the Agency Director, or designee, to execute agreement, subject to approval as to form by County Counsel and submit an executed copy to the Clerk of the Board for filing;
- D. Approve a budget adjustment in the amount of \$500,000 of general fund appropriations; and
- E. Authorize Auditor-Controller to make necessary related budget adjustments

SUMMARY/DISCUSSION

Alameda County Health Care Services Agency (HCSA) is working with local health system partners to administer COVID-19 vaccines through Vaccine Points of Dispensing ("PODs"). The COVID-19 vaccine has been approved for use by California providers under an emergency use authorization (EUA) from the United States Food and Drug Administration (FDA). Vaccinating our communities is a critical component of the strategy to reduce COVID-19 related illnesses,

hospitalizations, and deaths and to help restore societal functioning. The County is required to report data about vaccinations to the California Department of Public Health (“CDPH”) via the state’s California Immunization Registry system (CAIR2).

HCSA requests that your Board approve the Standard Services Agreement with Primary Diagnostics, Inc. (“Primary”) to facilitate scheduling and management of COVID-19 vaccination appointments at County Vaccine Mega PODs and Community PODs via the Contractor’s appointment software. Primary’s software will be utilized by the County to manage scheduling appointments for COVID-19 vaccines and to report required information, including Protected Health Information (PHI), to the state’s CAIR2 system.

Alameda County is home to a variety of distinct communities, each with unique needs and characteristics. HCSA has prioritized equity at the center of its decision-making with respect to vaccine deployment and logistics. Primary Diagnostics, Inc.’s software solution was identified as part of this focus upon equity; in particular, the contractor’s software features translation services for 15 languages and is highly customizable to address the varying needs of Alameda County’s diverse communities. These language features will help ensure equitable access to vaccinations. As part of this agreement, Primary will assist with the setup and training of County staff and key partners at PODs as they adopt and utilize this software platform.

SELECTION CRITERIA/PROCESS

To meet the County’s logistical needs for vaccine appointment scheduling and management and the state’s reporting requirements, HCSA contacted Primary Diagnostics, Inc. to explore its availability and capacity to provide software for a COVID-19 vaccine appointment scheduling system and related technical support. The Contractor’s software solution meets the County’s unique needs, particularly with respect to the software’s customization options and ability to translate materials in 15 different languages.

Given the urgent need to expand COVID-19 vaccinations in the County and report related data to the state, HCSA respectfully requests your Board to waive the competitive procurement process for this contract. Increasing access to COVID-19 vaccination services in the County, especially across diverse communities, is key to addressing health disparities resulting from the pandemic as well as implementing a safe reopening plan.

This contract is Federally funded and; therefore, Federal Grant SLEB Waiver (No. 1836) was approved and issued by the Auditor Agency and is valid through 4/30/2021.


FINANCING

HCSA will apply for federal emergency funding necessary to meet its public health responsibilities related to the COVID-19 pandemic. Costs are necessary to provide vaccinations. A budget adjustment in the amount of \$500,000 is requested and offset by FEMA revenue. Approval of these recommendations will have no impact on net County cost.

VISION 2026 GOAL

Increasing access to COVID-19 vaccinations via appointment registration software and related supportive services meets the 10X goal pathway of **Healthcare for All** in support of our shared visions of a **Thriving and Resilient Population** and a **Prosperous and Vibrant Economy**.

Sincerely,

DocuSigned by:

CB284AE84C50405...

Colleen Chawla, Director
Health Care Services Agency

A RESOLUTION AUTHORIZING THE WAIVER OF THE COUNTY'S PROCUREMENT PROCESS FOR COMPETITIVE BIDDING FOR COVID-19 VACCINE APPOINTMENT SCHEDULING SYSTEM AND RELATED TECHNICAL SUPPORT FOR THE COUNTY OF ALAMEDA

RESOLUTION NUMBER R-2021 - 54

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency within the State due to the threat posed by the novel coronavirus ("COVID-19"); and

WHEREAS, the COVID-19 vaccine has been approved for use by California providers under an emergency use authorization (EUA) from the United States Food and Drug Administration (FDA); and

WHEREAS, Alameda County Health Care Services Agency (HCSA) is working with local health system partners to administer COVID-19 vaccines through Vaccine Points of Dispensing ("PODs"); and

WHEREAS, COVID-19 vaccination communities within Alameda County is a critical component of the strategy to reduce COVID-19 related illnesses, hospitalizations, and deaths and to help restore societal functioning; and

WHEREAS, the HCSA and Alameda County Public Health Department (ACPHD) identified the need to increase and facilitate access and appointment scheduling for COVID-19 vaccinations; and

WHEREAS, the HCSA and ACPHD are prioritizing equity at the center of decision-making with respect to vaccine deployment and logistics; and

WHEREAS, the County is required to report data about vaccinations to the California Department of Public Health ("CDPH") via the state's California Immunization Registry system (CAIR2); and

WHEREAS, Primary Diagnostics, Inc. ("Primary") is a technology company based in San Francisco, California, that has developed a software platform for scheduling and managing COVID-19 testing and vaccination appointments; and

WHEREAS, Primary's software platform for COVID-19 vaccination appointment scheduling and management is capable of exchanging required reporting data with the state's CAIR2 system; and

WHEREAS, Primary's software platform for COVID-19 vaccination appointment scheduling and management features customization options and ability to translate materials in 15 different languages that will assist in reaching the County's diverse communities; and

WHEREAS, the County of Alameda ("County") wishes to acquire the services of Primary Diagnostics, Inc. provide software for COVID-19 vaccine appointment scheduling systems and related technical support with the goal of assisting the County to increase access to COVID-19 vaccination services in the County, especially across diverse communities; and

WHEREAS, Procurement Contract 21725 will have a not-to-exceed amount of \$500,000 for Primary Diagnostics, Inc. to provide software for COVID-19 vaccine appointment scheduling systems and related technical support, and

WHEREAS, Alameda County Administrative Code Sections 4.12.010, 4.12.010, and 4.12.070 require the solicitation of bids for contracts that are more than \$100,000 except in unusual cases where the Board of Supervisors ("Board") has, by resolution, found and determined the public interest would not be served by complying with the standard bid solicitation process; and

WHEREAS, the Board has determined that Primary has the required expertise to provide the software for COVID-19 vaccine appointment scheduling systems and related technical support; and

WHEREAS, the Board has determined that following the County's standard bid solicitation process would not serve the public interest as it would be impracticable and would delay access to COVID-19 vaccination services in the County;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The findings stated in the recitals to this Resolution are restated in full and adopted by reference.
2. The requirements in Administrative Code Sections 4.12.010 to .020 for the solicitation of bids are hereby waived for Primary Diagnostics, Inc..

Adopted by the Board of Supervisors of the County of Alameda, State of California, on this date, February 9, 2021 by the following called vote:

AYES: Supervisors Chan, Haubert, Miley, Valle and President

NOES: None


EXCUSED: None

Carson - 5

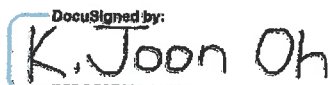


President of the Board of Supervisors
County of Alameda, State of California

ATTEST:
Clerk of the Board of Supervisors,
County of Alameda

By: 

APPROVED AS TO FORM:
Donna Ziegler, County Counsel

DocuSigned by:

By: K. Joon Oh
EFDCE3E661894A0...
K. Joon Oh
Deputy County Counsel

FINANCIAL RECOMMENDATION FORM

#140100-35 Rev 5/21/14

AGENDA DATE: 2/9/2021

BOARD LETTER SUBJECT: APPROVE THE STANDARD SERVICES AGREEMENT WITH
PRIMARY DIAGNOSTICS, INC. TO PROVIDE SOFTWARE FOR COVID-19 VACCINE APPOINTMENT
SCHEDULING SYSTEM AND RELATED TECHNICAL SUPPORT

BUDGET YEAR: 2021 **FUND:** 21700

The use of Designations, as follows:

NAME OF DESIGNATION	ORG	AMOUNT

The increase (decrease) in anticipated revenue, as follows:

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
510100	455110	00000		\$500,000
ORG TOTAL				\$500,000

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
ORG TOTAL				\$0

GRAND TOTAL ANTICIPATED REVENUE \$500,000

The increase (decrease) in appropriations, as follows:

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
510100	640000	00000		\$500,000
ORG TOTAL				\$500,000

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
ORG TOTAL				\$0

GRAND TOTAL APPROPRIATION \$500,000

FINANCIAL RESOLUTION R-2021-055

PAGE: 1 OF 2
FILE NUMBER: 30600
MEETING DATE: 2/9/2021
ITEM NUMBER: 9.1
FUND: 21700

BY: 2021

The increase (decrease) in anticipated revenue, as follows:

Informational

ORG	ACCT	PROG	PROJ/GR	AMOUNT
510100	455110	00000		\$500,000
ORG TOTAL				\$500,000

Informational

ORG	ACCT	PROG	PROJ/GR	AMOUNT
ORG TOTAL				\$0

GRAND TOTAL ANTICIPATED REVENUE \$500,000

The increase (decrease) in appropriations, as follows:

Informational

ORG	ACCT	PROG	PROJ/GR	AMOUNT
510100	640000	00000		\$500,000
ORG TOTAL				\$500,000

Informational

ORG	ACCT	PROG	PROJ/GR	AMOUNT
ORG TOTAL				\$0

GRAND TOTAL APPROPRIATION \$500,000

THE FOREGOING was **PASSED** and **ADOPTED** by a majority vote of the Alameda County Board of Supervisors this **9th** day of **February, 2021**, to wit:

AYES: Supervisors Chan, Haubert, Miley, Valle & President Carson – 5

NOES: None

EXCUSED: None



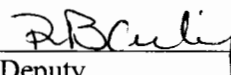
PRESIDENT, BOARD OF SUPERVISORS

File No: 30600
Agenda No: 9.1
Document No: R-2021-55F



I certify that the foregoing is a correct copy of a Resolution adopted by the Board of Supervisors, Alameda County, State of California

ATTEST:
Clerk, Board of Supervisors

By: 
Deputy

**COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of February 1, 2021, is by and between the County of Alameda, hereinafter referred to as the “County”, and Primary Diagnostics, Inc., hereinafter referred to as the “Contractor”.

WITNESSETH

Whereas, County desires to obtain software and technical support for vaccine scheduling and data interface services which are more fully described in Exhibit A hereto; and

Whereas, Contractor is professionally qualified to provide such services and is willing to provide same to County; and

Now, therefore it is agreed that County does hereby retain Contractor to provide software and technical support for vaccine scheduling and data interface Services, and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

- Exhibit A Definition of Services
- Exhibit B Payment Terms
- Exhibit C Insurance Requirements
- Exhibit D Debarment and Suspension Certification
- Exhibit E Additional Contract Provisions – Federal Provisions
- Exhibit E-1 Certification for Contracts, Grants, Loans, and Cooperative Agreement
- Exhibit F HIPAA Business Associate Agreement

The term of this Agreement shall be from February 1, 2021 through April 30, 2021.

The compensation payable to Contractor hereunder shall not exceed five hundred thousand dollars (\$500,000.00) for the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF ALAMEDA

PRIMARY DIAGNOSTICS, INC.

DocuSigned by:

By: CB284AE84C50405...
Signature

DocuSigned by:

By: 7C2D23FDA6FD4A1...
Signature

Name: Colleen Chawla
(Printed)

Name: Andrew Kobylinski
(Printed)

Title: Director, Alameda County Health
Care Services Agency

Title: Chief Executive Officer

Date: 2/9/2021

Approved as to Form:

DocuSigned by:

By: EFDCE3E661894A0...
K. Joon Oh
Deputy County Counsel

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an independent contractor. Contractor is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such amounts.

In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of County.

Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of County is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the County determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, County may upon two week's notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or

resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving Contractor of any obligation hereunder. The obligations of this indemnity shall be for the full amount of all damage to County, including defense costs, and shall not be limited by any insurance limits.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda County Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

3. **INSURANCE AND BOND:** Contractor shall at all times during the term of the Agreement with the County maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of Contractor's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Contractor's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Contractor's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self-insurance shall be called upon to protect it as a named insured.
4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in

a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.

5. **WORKERS' COMPENSATION:** Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense and further, neither the Contractor nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
6. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold County harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.
 - b. **Accidents:** If a death, serious personal injury, or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Alameda County Risk Manager's Office by telephone. Contractor shall promptly submit to County a written report, in such form as may be required by County of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's sub-Contractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.
 - c. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.
7. **DEBARMENT AND SUSPENSION CERTIFICATION:** (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).
 - a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of

Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.

- b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
8. **PAYMENT:** For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B hereto.
9. **TRAVEL EXPENSES:** Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.
10. **TAXES:** Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.
11. **OWNERSHIP OF DOCUMENTS:** Contractor hereby assigns to the County and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the County, the Contractor, the Contractor's sub-Contractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

Contractor also hereby assigns to the County and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in Contractor's Information System, respecting in any way the subject matter of this Agreement.

Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by County to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the County and any assignee of the County an express royalty – free license to retain and use said Documents and Materials. The County's rights under this paragraph shall apply regardless of the degree of completion of the Documents

and Materials and whether or not Contractor's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

In Contractor's contracts with other Contractors, Contractor shall expressly obligate its Sub-Contractors to grant the County the aforesaid assignment and license rights as to that Contractor's Documents and Materials. Contractor agrees to defend, indemnify, and hold the County harmless from any damage caused by a failure of the Contractor to obtain such rights from its Contractors and/or Sub-Contractors.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the County harmless from any claims for infringement of patent or copyright arising out of such selection. The County's rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Contractor represents to and agrees with the County that Contractor has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County.

The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify the County by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the County hereunder.

13. **NOTICES:** All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in

a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To County: ALAMEDA COUNTY HEALTH CARE SERVICES
AGENCY
1000 San Leandro Blvd, Suite 300
San Leandro, CA 94577
Attn: Kristel Acacio, Finance Director

To Contractor: PRIMARY DIAGNOSTICS, INC.
595 Pacific Avenue, Floor 4
San Francisco, CA 94133
Attn: Andrew Kobylinski

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14. USE OF COUNTY PROPERTY: Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.

15. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:
Contractor assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in,

be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.

- a. Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - b. Contractor shall, if requested to so do by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - c. If requested to do so by the County, Contractor shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Contractor shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
 - f. The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.
16. **DRUGFREE WORKPLACE:** Contractor and Contractor's employees shall comply with the County's policy of maintaining a drugfree workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the Contractor within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
17. **AUDITS; ACCESS TO RECORDS:** The Contractor shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged

to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by the Contractor.

The Contractor shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the County of Alameda, California, Contractor shall, upon request of the County, make such books and records available to the County for inspection at a location within County or Contractor shall pay to the County the reasonable, and necessary costs incurred by the County in inspecting Contractor's books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and Contractor with respect to this Agreement are closed, whichever is later.

18. **DOCUMENTS AND MATERIALS:** Contractor shall maintain and make available to County for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. Contractor's obligations under the preceding sentence shall continue for three (3) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by County), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the County's last payment to Contractor under this Agreement.
19. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. **TERMINATION:** The County has and reserves the right to suspend, terminate, or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the County should abandon, terminate, or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to Contractor for its software and technical support for vaccine scheduling and data

interface Services shall not exceed \$500,000.00 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.

21. SMALL, LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION:

A SLEB Waiver for this agreement is pending. If Contractor is approved by County to participate in contract without SLEB participation, there will be no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision.

However, if circumstances or the terms of the contract should change, Contractor may be required to immediately comply with the County's Small and Emerging Local Business provisions, including but not limited to:

- a. Contractor must be a certified small or emerging local business(es) or subcontract a minimum 20% with a certified small or emerging local business(es).
- b. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- c. Small and/or Emerging Local Business participation and current SLEB certification status must be maintained for the term of the contract. Contractor shall ensure that their own certification status and/or that of participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.
- d. Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance & Reporting (OCCR).
- e. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System.

County will be under no obligation to pay contractor for the percent committed to a SLEB (whether SLEB is a prime or subcontractor) if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact OCCR via e-mail at ACSLEBcompliance@acgov.org.

22. **FIRST SOURCE PROGRAM:** For contracts over \$100,000, Contractor shall provide County ten (10) working days to refer to Contractor, potential candidates to be considered by Contractor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County that Contractor has available during the contract term before advertising to the general public.
23. **CHOICE OF LAW:** This Agreement shall be governed by the laws of the State of California.
24. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
25. **ENTIRE Agreement:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between County and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.
26. **HEADINGS** herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
27. **ADVERTISING OR PUBLICITY:** Contractor shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance.
28. **MODIFICATION OF Agreement:** This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
29. **ASSURANCE OF PERFORMANCE:** If at any time County believes Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete the Services as required by this Agreement, County

may request from Contractor prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. Contractor acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.

30. **SUBCONTRACTING/ASSIGNMENT:** Contractor shall not subcontract, assign, or delegate any portion of this Agreement or any duties or obligations hereunder without the County's prior written approval.
- a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Contractor shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without County's prior written approval.
 - c. Contractor shall require all subcontractors to comply with all indemnification and insurance requirements of this agreement, including, without limitation, Exhibit C. Contractor shall verify subcontractor's compliance.
 - d. Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.
31. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.
32. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
33. **PATENT AND COPYRIGHT INDEMNITY:** Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to County under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless County of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection

with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. County will: (1) notify Contractor promptly of such claim, suit, or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without County's prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the Contractor Products.

- a. If Contractor is obligated to defend County pursuant to this Section 33 and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and Contractor shall pay to County any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with County's defense and/or settlement of such proceeding.
 - b. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.
 - c. Notwithstanding this Section 33, County retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.
34. OTHER AGENCIES: Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.
35. EXTENSION: This agreement may be extended for an additional year by mutual agreement of the County and the Contractor.
36. SIGNATORY: By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

DEFINITION OF SERVICES

Contractor: Primary Diagnostics, Inc.

Contracting Department: Health Care Services Agency

Contract Period: February 1, 2021 – April 30, 2021

Amount: Not to exceed \$500,000

1. Background

The COVID-19 vaccine has been approved for use by California providers under an FDA emergency use authorization (EUA). Alameda County is administering COVID-19 vaccines through Vaccine Points of Distribution (“PODs”). The County is required to report data about vaccinations to the California Department of Public Health (“CDPH”) via the state’s California Immunization Registry system, CAIR2.

Alameda County has prioritized equity at the center of its decision-making with respect to vaccine deployment and logistics. Primary Diagnostics, Inc.’s software solution was selected due to the need to engage a large variety of communities within the County, each with unique needs and characteristics. In particular, the contractor’s software features translation services for 15 languages and is highly customizable to address the varying needs of Alameda County’s diverse communities. These language features will help ensure equitable access to vaccinations.

2. Scope of Work

Contractor shall provide County with access to its software platform to facilitate scheduling and management of COVID-19 vaccination appointments at County Vaccine Mega PODs and Community PODs via the Contractor’s appointment software. Support services include:

- To provide a data interface that reports required COVID-19 vaccination data to the California Immunization Registry (CAIR2);
- To develop and provide customized registration portals and tools to enable scheduling and management of appointments;
- To provide remote and on-site technical and professional assistance to the County and its partners with respect to:
 - Training of vaccine POD staff on how to use appointment software;
 - Utilizing software’s features for different languages to enable equitable access to registration for various communities within Alameda County; and
 - Maintenance and help-desk support for software issues and questions.

All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Exhibit A-1. Contractor shall provide software and technical support for vaccine scheduling and data interface services as set on this Exhibit A and further described in Exhibit A-1 and Exhibit B.

3. Software and Services

- a. Provision of Software Platform. Contractor shall provide County the Software for the duration of the Subscription Period. In connection with receiving such services, County will receive a license to access or receive Contractor Data for the duration of the Subscription Period. Upon completion of the Subscription Period all sensitive data shall be purged from Contractor's systems in a manner mutually agreed upon with County, and in compliance with regulatory protocols, and upon request from County, shall provide the County a copy of the County Data in a mutually agreed upon format. New features implemented to Contractor's Software platform will also be offered to County for the life of the Agreement regarding updates and improvements. All processes will be HIPAA-compliant, including the HIPAA Security Rule and HITECH Act, and adhere to any additional federal, state, or local regulatory requirements. Software includes Primary Digital Platform Software as a Service.
- b. Description of Services. As part of the Software platform, Contractor will customize and support the needs of existing and future County client relationships which may include but are not limited to the following:
- Train (virtually) on-site managers, admin, greeters, etc.
 - Customized registration portals
 - Technical setup support
 - Remote support and technical assistance to County staff and partners, as needed

Contractor shall provide maintenance and professional services as required to complete the activities referenced in the Exhibit A(s) and Exhibit B(s) of this agreement.

Contractor shall perform the scope of services in this Exhibit A and the activities referenced in Exhibit B which are included in the monthly platform fee.

Specialized Technical Support to additional software services beyond maintenance services and professional services are subject to the billing rates and budget provided under Exhibit B.

EXHIBIT A-1

SERVICE TERMS AND CONDITIONS

GENERAL TERMS AND CONDITIONS

RECITALS

Contractor is the owner of, or has acquired rights to, the Software and Documentation (each as defined below).

Contractor has the capability to provide the Services related to such Software and Documentation.

Contractor desires to grant and County desires to obtain a non-exclusive license to use the Software, the Documentation, and the Contractor Data, in accordance with applicable Schedule(s) and the terms and on the conditions set forth in this Agreement.

Contractor desires to provide County with Maintenance Services and Professional Services in accordance with applicable Schedule(s) or SOW(s) and the terms and conditions set forth in this Agreement. County desires to receive such Maintenance Services and Professional Services, as applicable, in accordance with such applicable Schedule(s) or SOW(s).

1. Definitions

The following are definitions of terms used in this Agreement:

- a) **"Client"** shall mean any individual or entity, including childcare facilities, schools and employers, utilizing the Software for the purpose of facilitating and streamlining COVID-19 testing or vaccination of County residents.
- b) **"Confidential Information"** shall mean any information that is disclosed by one party (the **"Disclosing Party"**) to the other party (the **"Receiving Party"**), in written, graphic, machine-readable or other tangible form and (i) is marked **"Confidential," "Proprietary,"** or in some other manner to indicate its confidential nature, or, if orally disclosed or obtained by observation, is identified as confidential at the time of disclosure and confirmed in writing to have been confidential within thirty (30) days of disclosure or observation; or (ii) should reasonably be known to be confidential based on the nature of the information and the context of the disclosure. Contractor Confidential Information includes, without limitation, the Software (including in all formats, including in source code and object code formats), Documentation, Contractor Data, and Data Derivatives. County Confidential Information includes County Data.
- c) **"County Data"** shall mean the data (in any format or media) entered, provided by or otherwise made accessible to Contractor, by County or its End Users in connection with use of the Software or Services. For the avoidance of doubt, County Data does not include any Public Data or Contractor Data.
- d) **"County Marks"** shall mean County's name, logos, trade name, and trademarks.
- e) **"Documentation"** shall mean all manuals, user documentation, and other related materials pertaining to the Software, as updated by Contractor from time to time, which are furnished to County by Contractor in connection with this Agreement.
- f) **"Effective Date"** means the date of this Agreement comes into force as set forth on the signature page.
- g) **"End Users"** shall mean the individuals County has authorized and designated to utilize the Software, Documentation, Contractor Data (if applicable under the particular Schedule or SOW), or Maintenance Services, as provided under the terms of this Agreement and in accordance with the applicable Schedule or SOW, provided that any such individual: (i) is a County employee, agent or contractor, or is an employee, agent, Client; (ii) have a need to access and use the Software, Documentation, Contractor Data

or Maintenance Services (as applicable), based upon their relationship with County; and (iii) have agreed in writing to adhere to and be bound by the terms of this Agreement. End Users do not include an individual using or attempting to use the Software to schedule a testing or vaccination appointment or to check test results for themselves, family member, or friend.

- h) **"Fee(s)"** shall mean the fees that County pays Contractor under a Schedule or SOW.
- i) **"HIPAA"** shall mean collectively, the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations, as amended from time to time.
- j) **"Maintenance Services"** shall mean the applicable maintenance services as specified in a Schedule for licensed Software.
- k) [intentionally blank]
- l) **"Professional Services"** shall mean data collection, data validation, implementation, development, training or such other services provided by Contractor for or on behalf of County as agreed upon in a Schedule or an SOW.
- m) **"Public Data"** shall mean data (in any format or media) that is generally available and in the public domain (through no act or omission of a party), and that is not proprietary to, or subject to exclusive ownership by, any party.
- n) **"Contractor Data"** shall mean any and all data (in any format or media) that Contractor uses, creates, collects or receives from various sources (including from any healthcare providers or licensed by Contractor from third party vendors), that Contractor makes available or provides to County through or in connection with any of the Services or the Software or as otherwise specified in a Schedule, including but not limited to, any databases, compilations, enhancements, improvements, transformations, and derivative works created by Contractor based on such data or any Public Data.
- o) **"Contractor Marks"** includes "Primary", the Contractor logos, slogans, marks, combinations thereof, and any and all other source-identifying devices now or hereafter used by Contractor or by any of its affiliates, or its suppliers.
- p) **"Schedule"** shall mean the Exhibit A(s) to this Agreement.
- q) **"Schedule Effective Date"** and **"SOW Effective Date"** shall mean, respectively, the date on which the applicable Schedule or SOW goes in effect.
- r) **"Services"** shall mean collectively the Professional Services and the Maintenance Services.
- s) **"Software"** shall mean the software as a service computer programs in provided using a cloud-based platform as applicable to County under the applicable Schedule or SOW, any error corrections or updates supplied by Contractor to County, if applicable, and the design, function, and content (e.g., layout, text, graphics, user interfaces) of the foregoing.
- t) **"SOW"** shall mean a statement of work describing a particular service, i.e., under the Exhibit A(s) to this Agreement.
- u) **"Submissions"** shall mean any suggestions, feedback, ideas, concepts, comments, illustrations, and other materials that County or End Users disclose, submit, make available, or offer to Contractor at any time during the course of this Agreement, or any Schedule or SOW.
- v) **"Subscription Period"** shall mean the period of time during which Contractor will provide a license to use the Software or Services under a Schedule. The Subscription Period is comprised of the Initial Period and each Renewal Period (if applicable), where the "Initial Period" is February 1, 2021 through April 30, 2021. The agreement may be renewed for a period(s) of time after April 30, 2021 "Renewal Periods" if mutually agreed to in writing by authorized representatives of each party.

- w) "Term" shall mean the time period beginning on the Effective Date and ending upon the termination or expiration of this Agreement.
- x) [intentionally blank]
- y) "Territory" shall mean the geographic scope of the license to use Services or Software, namely the United States. Unless expressly agreed in a Schedule, the Territory shall not include any locations outside the United States.

2. Scope of Licenses, Restrictions and Obligations.

- a) Grant of Rights. For the duration of the applicable Subscription Period, and subject to County's compliance with the terms of this Agreement and the applicable Schedule or SOW, including County's payment obligations, Contractor hereby grants, and County hereby accepts, a limited, non-exclusive, non-transferable, non-sublicensable right to access and use within the Territory, the Software and Documentation specified in the Schedule, (and if applicable, the Contractor Data), subject to the terms and restrictions of this Agreement (and any additional terms and restrictions set forth in the particular Schedule or SOW). County does not acquire under this Agreement any other right or license (including any implied licenses) to use the Software, Documentation or Contractor Data, except as expressly granted in this Section 2(a).
- b) Third Party Licensed Components. County acknowledges and agrees that certain data and technology included in the Software is provided by third party vendors whose services have been contracted by Contractor.

In the event that a data or technology third-party vendor fails to provide such data or technology as agreed between Contractor and such third-party vendor, Contractor will exercise commercially reasonable efforts to continue to provide Software and Services to County as described herein, including working in good faith to find an acceptable replacement. In the event Contractor is unable to provide a replacement to the third-party data or technology, County and Contractor may terminate the applicable Schedule or SOW that requires the use of such third-party components.

- c) Restrictions on Use. County may use the Software (and if applicable, the Contractor Data), only for the purposes described in the Schedule or Documentation and within the scope as expressly set forth in Section 2(a) above. Except as otherwise expressly stated in the applicable Schedule, County shall not (i) copy, reproduce, modify, adapt, translate, distribute, transmit, download, upload, post, sell, rent, license, sublicense, transfer, mirror, frame, create derivative works of, reverse engineer, decompile or disassemble any aspect of the Software, Contractor Data or the Documentation (including, but not limited to, any underlying data), in whole or in part, in any form or by any means, without Contractor's prior written permission (in its sole discretion) provided, however, County may disclose Contractor Data to the Centers for Medicare & Medicaid Services or other local, state or federal regulatory agencies to the extent such disclosure is required by such agencies (iv) use the Software, Contractor Data or Documentation in a manner that in material respects, delays, impairs, or interferes with system functionality for other users of the Software, Contractor Data or Documentation or that compromises the security or integrity of the Software; (v) knowingly enter data through the use of the Software that is threatening, harmful, lewd, offensive, defamatory, or that injures or infringes the rights of others; (vi) apply systems to extract or modify information hosted through the Software using technology or methods such as those commonly referred to as "web scraping," "data scraping," or "screen scraping"; or (vii) use the Software, Contractor Data or the Documentation, or any part or aspect of them, for any unlawful purpose (including any purpose that may violate or be prohibited by applicable law). Access to or the license to use of the Software, Contractor Data or the Documentation may be limited or suspended immediately in Contractor's reasonable discretion if the terms of this Section 2(c) are violated.
- d) County Responsibilities.

- i. County is responsible for approving access to End Users, for End Users' compliance with applicable requirements in this Agreement (including applicable Schedules and SOWs) or in any Terms of Use, and for maintaining the confidentiality of log-in credentials issued in a commercially reasonable manner. County is also responsible for providing Contractor with written notification within five (5) business days of County's termination of its relationship with any such End User for purposes of ensuring that log-in credentials or access rights are invalidated.
- ii. County shall promptly notify Contractor upon becoming aware of any unauthorized use of the Software, Contractor Data or Documentation, whether by End Users or unauthorized individuals or entities.
- iii. County is responsible for ensuring that it does not disclose, provide or make available to Contractor (including as part of County Data), any protected health information (as defined under HIPAA) or any personal data of any individuals (other than such information as necessary for Contractor to perform the Services). County acknowledges and agrees that it is responsible for its compliance with all applicable state, local and federal laws, including HIPAA, and state data protection laws.

3. **Maintenance Services and Professional Services**

- a) General. During the applicable Subscription Period, and subject to County's compliance with the terms of this Agreement and the applicable Schedule or SOW, including County's payment obligations, Contractor will provide County with Maintenance Services and Professional Services, which includes:
 1. Dedicated part-time project management resources
 2. Assigned development resources as needed to accommodate changing requirements
 3. Dedicated support and training staff
 4. Additional partner integration services, Primary will work with State's clinical partners and providers to set up processes and data exchange as applicable. Details TBD upon initial call with each lab/medical partner.
 5. New features and functionality - planned and mutually agreed to
 6. Data specialists as necessary to support data feeds/ extractions to County analytics
 7. Enterprise level dashboarding and analytics
 8. Test site planning and optimization work, includes but not limited to
 - a. Site selection
 - b. Operational Playbooks
 - c. Site Layouts (location-specific, basic design) *limited to high-capacity sites
 - d. Capacity Planning and Configuration
 - e. Infrastructure Consulting (permitting / engineering not included)
 - f. Tenting, Power, WiFi, Waste, Logistics, Traffic (basic design, no engineering)
 - g. Direct Contact with Operational Lead
 9. Train (virtually) on-site managers, admin, greeters, etc.
 10. Customized registration portals
 11. Technical setup support
 12. Remote support and technical assistance to County staff and partners, as needed

13. Services performed under Section 4, Warranty.

4. **Warranty**

- a) Software Warranty. Contractor represents and warrants that the Software provided hereunder will operate substantially in accordance with the applicable Documentation, as described in an applicable Schedule. Contractor will use commercially reasonable efforts to make such additions, modifications, or adjustments to the Software as may be necessary to correct any repeatable problems or defects discovered in the Software and reported to Contractor in writing by the County, excluding defects or problems arising from misuse by the County. The foregoing shall be County's sole and exclusive remedy for breach of the Software warranty.
- b) Services Warranty. Contractor further represents and warrants that Professional Services and Maintenance Services will be performed in accordance with the applicable SOW or Schedule. If there is a breach of a warranty in this Section 6(b), as County's sole and exclusive remedy, within thirty (30) days from the date County notifies Contractor in writing of the breach, Contractor shall (to the extent feasible) re-perform the Professional Service or Maintenance Service, at no additional cost, as reasonably required to address any material defects caused by Contractor's failure to meet this warranty.
- c) The warranties in this Agreement shall be null and void in the event that all or any part of the Software is modified by County.

5. **Ownership and Use of Data, Marks and Intellectual Property Rights**

- a) County Intellectual Property and Data.
 - i. Ownership of County Intellectual Property. Contractor hereby acknowledges and agrees that as between Contractor and County, County exclusively owns all rights, title and interest in and to County Marks and County Data (collectively, "County Intellectual Property"), and to all intellectual property rights worldwide thereto.
 - ii. Right to Use County Data for the Services. County hereby grants to Contractor a non-exclusive, transferable right to use and process County Data throughout the Term of this Agreement and the applicable Subscription Period(s) under any Schedule or SOW in connection with Contractor performing the Services for or on behalf of County.
 - iii. Right to Use County Marks. County hereby grants Contractor the right to use County Marks for purposes relating to and in connection with providing the Services under the term of the Agreement. Contractor shall not use County Marks for any commercial purposes and shall not use County Marks for any other purpose without County's consent, which shall not be unreasonably withheld and may be provided by e-mail by an authorized representative of the County.
- b) Ownership of Contractor Intellectual Property. County hereby acknowledges and agrees that as between Contractor and County, Contractor exclusively owns all right, title, and interest worldwide in the Contractor Marks, the Software (including in all formats, including in source code and object code formats), the Services, the Documentation, the Contractor Data, and Submissions, including any and all modifications, enhancements, improvements, transformations or derivative works thereof (collectively, "Contractor Intellectual Property"), and to all intellectual property rights worldwide thereto. To the extent that County has or asserts any rights in any Contractor Intellectual Property, County hereby irrevocably and in perpetuity assigns to Contractor all worldwide rights, title, and interest County may have therein.

EXHIBIT B

PAYMENT TERMS

Contractor: Primary Diagnostics, Inc.
Contracting Department: Health Care Services Agency
Contract Period: February 1, 2021 – April 30, 2021
Amount: Not to exceed \$500,000

I. Fee Schedule (2/1/2021 – 4/30/2021)

Service Description	
Allowable Expenses	
Monthly Software Platform Fee	\$55,000 per month (\$155,000 for 3 months)
Includes:	
<ol style="list-style-type: none"> 1. Dedicated part-time project management resources 2. Assigned development resources as needed to accommodate changing requirements 3. Dedicated support and training staff 4. Additional partner integration services, Primary will work with State’s clinical partners and providers to set up processes and data exchange as applicable. Details TBD upon initial call with each lab/medical partner. 5. New features and functionality – planned and mutually agreed to 6. Data specialists as necessary to support data feeds/extractions to County analytics 7. Enterprise level dashboarding and analytics 8. Test site planning and optimization work, includes but not limited to <ol style="list-style-type: none"> a. Site selection b. Operational Playbooks c. Site Layouts (location-specific, basic design) *limited to high-capacity sites d. Capacity Planning and Configuration e. Infrastructure Consulting (permitting / engineering not included) f. Tenting, Power, WiFi, Waste, Logistics, Traffic (basic design, no engineering) g. Direct Contact with Operational Lead 	
Software Per Dose Fee (vaccine)	\$1 per dose
Software Per Test Fee (PCR)	\$5 per test
Software Per Test Fee (rapid antigen)	\$1 per dose
<u>SPECIALIZED TECHNICAL SUPPORT rates below:</u>	
Site Lead/Coordinator:	
\$125/hour - Estimated at 50 hours per week (based on current program scale and preparedness of clinics [\$75,000 estimated over 3 months])	

Onsite Trainer - Software and Staff Workflows:

\$200/hour - Estimated at 10 hours per week (based on current program scale and preparedness)
[\$24,000 estimated over 3 months]

Science and Medical Advisory Team:

\$300/hour - No estimated hours based on current scope

C Suite Staff and Custom Development:

\$275/hour - No estimated hours based on current scope

TOTAL AMOUNT NOT TO EXCEED: \$500,000

Terms and Conditions of Payment

A. Reimbursement:

1. The total amount of reimbursement under the terms of this Agreement shall not exceed **\$500,000**. This cost includes all taxes and other charges. Funds may not be used for any purpose other than those specified in Exhibit A(s) and Exhibit B(s) of this Agreement.
2. Services are rendered as needed.
3. Fee schedule/budget amounts may vary between budget categories only with HCSA written consent.
4. Contractor shall invoice County for expenses in accordance with the fees and schedule above.
5. The County and/or Auditor-Controller may withhold payment of all or a portion of Contractor's claim for reimbursement of expenses when the Contractor has not complied with provisions of the current Agreement or a prior Agreement. Such matters of non-compliance may include, but are not restricted to, the delivery of patient and related services, submission of consumer service data and required reports, submission of documents supporting reimbursement requests which verify expenditures incurred, maintenance of proper records, submission of revenue reports, disallowance as a result of interim audit or financial compliance evaluations, or other conditions as required in this Agreement by Federal, State or County regulations.
6. County shall process invoice submitted for reimbursement by contractor within forty-five (45) days of receipt of invoice, submission of acceptable quarterly report status and evaluation reports as defined in Exhibit A of this Agreement and any other back up documentation as requested.

EXHIBIT C**EXHIBIT C****COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS**

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements:

	TYPE OF INSURANCE COVERAGES	MINIMUM LIMITS
A	Commercial General Liability Premises Liability, Products and Completed Operations; Contractual Liability, Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$1,000,000 per accident for bodily injury or disease
D	Professional Liability/Errors & Omissions Includes endorsements of contractual liability and defense and indemnification of the County	\$1,000,000 per occurrence \$2,000,000 project aggregate
E	<p>Endorsements and Conditions:</p> <ol style="list-style-type: none"> 1. ADDITIONAL INSURED: All insurance required above with the exception of Professional Liability, Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13. 2. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. 3. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. 4. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. 5. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13. 6. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods: <ul style="list-style-type: none"> — Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above. — Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured". 7. CANCELLATION OF INSURANCE: All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation. 8. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices provision. 	



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Vouch Insurance Services, LLC 831 Montgomery Street San Francisco, CA 94133	CONTACT NAME: John Wallace PHONE (A/C No. Ext.): (415) 488-0728 FAX (A/C No.): EMAIL: john.wallace@VOUCH.US ADDRESS:
	INSURERS AFFORDING COVERAGE
INSURED Primary Diagnostics, Inc. 500 Pacific Ave Floor 4 SF, CA 94133	INSURER A: State National Insurance Company 12831 INSURER B: Employers Preferred Insurance Company 10346 INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES **CERTIFICATE NUMBER: COI.25.ZPNK.3** **REVISION NUMBER: 1**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSR	ADDL INSR	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Business Liability GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO. SECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER				HDG.SOP.20.AN83-ZPNK	08-08-2020	08-08-2021	EACH OCCURRENCE \$2,000,000 DOWNSIDE TO RENTED PREMISES (EA OCCURRENCE) \$120,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY				HDG.SOP.20.AN83-ZPNK	02-08-2021	08-08-2021	COMBINED SINGLE LIMIT (EA accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Per Occurrence Limit \$1,000,000
	UMBRELLA EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$							EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/OWNER/EXECUTIVE OFFICER/MEMBER EXCLUDED (Statutory to Reg) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N			EIG 4833284.00	10-01-2020	10-01-2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
A	Employment Practices Liability Technology Professional Liability Cyber 3 rd Party Liability Cyber 1 st Party Coverage				HDG.MPL.20.AMDU-YWUS	08-08-2020	08-08-2021	Policy Aggregate Limit of Liability: \$2,000,000 Shared Limit of Liability: \$2,000,000 Employment Practices Liability Limit: \$1,000,000 Technology Professional Liability Limit: \$2,000,000 Cyber 3 rd Party Liability Limit: \$1,000,000 Cyber 1 st Party Coverage Limit: \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY 1000 San Leandro Blvd., Suite 300, San Leandro, CA 94577	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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POLICY NUMBER:
HDG.BOP.20.AN93-ZPNK

BUSINESSOWNERS
BP 04 48 07 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SCHEDULE

<p>Name Of Additional Insured Person(s) Or Organization(s): Alameda County Healthcare Services Agency, County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives (effective 02/05/2021) Provided, however, Alameda County Healthcare Services Agency, County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives are additional insureds only the extent that liabilities fall within obligations of Primary Diagnostics, Inc. to indemnify such additional insureds pursuant to a written agreement. Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

Section II – Liability is amended as follows:

A. The following is added to Paragraph C. Who Is An Insured:

- 3. Any person(s) or organization(s) shown in the Schedule is also an additional insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf in the performance of your ongoing operations or in connection with your premises owned by or rented to you.

However:

- a. The insurance afforded to such additional insured only applies to the extent permitted by law; and
- b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Paragraph D. Liability And Medical Expenses Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the contract or agreement; or
- 2. Available under the applicable Limits Of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits Of Insurance shown in the Declarations.

EXHIBIT D

**COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION**

(Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named and unnamed subcontractor:

- **Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;**
- **Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;**
- **Does not have a proposed debarment pending; and**
- **Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.**

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR: Primary Diagnostics, Inc.

PRINCIPAL: Andrew Kobylinski **TITLE:** Chief Executive Officer

SIGNATURE: **DATE:** 2/9/2021

EXHIBIT - E
ADDITIONAL CONTRACT PROVISIONS
FEDERAL PROVISIONS

Funds used for payment of this Contract may be from or subject to reimbursement by state and/or federal funds. Some of these funding sources require additional contractual obligations and County and Contractor hereby agree to the following additional terms and conditions. The parties agree to each of these terms for reasons including, but not limited to, meeting all contracting requirements as set forth in 2 C.R.F. § 200.326 and 2 C.F.R. Part 200, Appendix II. These terms supplement the General Terms and Conditions.

I. General Provisions

- (A) **Remedies.** In the event of a breach by Contractor of any term or provision of this Agreement, the County shall have the right to pursue all available remedies at law or equity, including recovery of damages and specific performance of this Agreement. The parties hereto agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by Contractor of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, Owner shall waive the defense that a remedy at law would be adequate. Except as expressly provided elsewhere in this Agreement, each party's rights and remedies under this Agreement are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to that party.
- (B) **Termination.** The County may suspend, terminate, or abandon the execution of any work by the Contractor under this Contract with or without cause at any time upon giving the Contractor prior written notice. In the event that the County should abandon, terminate, or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment, but in no event shall Contractor be entitled to more than the not to exceed amount of the Contract, or if applicable, the portion of the Contract being terminated.
- (C) **Equal Employment Opportunity.** During the performance of this contract, Contractor agrees as follows:
- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representatives of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action

with respect to any subcontract or purchase order as the County may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Contractor and refer the case to the Department of Justice for appropriate legal proceedings.

These provisions are included in addition to the Equal Employment Opportunity Practices Provisions in the General Terms and Conditions and Contractor shall abide by both provisions.

- (D) Rights to Inventions Made Under a Contract or Agreement.** If this Contract is funded in whole or part by a Federal award of funds and the Contract and/or funding meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the Contractor (the "recipient or subrecipient") wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient

must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. This requirement applies to "funding agreements," but it does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement."

(E) Clean Air Act and the Federal Water Pollution Control Act. The following provisions apply for all contracts in excess of \$150,000:

(1) Clean Air Act (42 U.S.C. 7401–7671q).

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. The Contractor agrees to report each violation of the Clean Air Act to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

(2) Federal Water Pollution Control Act (33 U.S.C. 1251–1387).

- a. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- b. The Contractor agrees to report each violation of the Federal Water Pollution Control Act to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

- (F) **Debarment and Suspension.** In addition to the debarment and suspension requirements in the General Terms and Conditions and executed Debarment certificate, the following terms shall apply:
- (1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters.
 - (3) This certification is a material representation of fact relied upon by the County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - (4) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of the Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered contracts.
- (G) **Conflict of Interest.** By executing this Contract, Contractor certifies that it does not know of any fact which constitutes a violation of Section 66 of County's Charter; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the County if it becomes aware of any such fact during the term of this Contract. In addition, Contractor shall be in full compliance with all other conflict of interest requirements, including those contained in 2 C.F.R. § 200.318.
- (H) **Byrd Anti-Lobbying Amendment.** For any contract of \$100,000 or more, Contractor shall complete the required certification (included below) Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the County.
- (I) **Procurement of recovered materials.**
- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

Competitively within a timeframe providing for compliance with the Contract performance schedule;

Meeting Contract performance requirements; or

At a reasonable price.

- (2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(J) Access to Records.

- (1) The Contractor agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(K) Changes. The cost of any change, modification, change order, or constructive change must be allowable, allocable, within the scope of a funding grant or cooperative agreement, and reasonable for the completion of project scope. Changes can be made by either party to alter the method, price, or schedule of the work without breaching the Contract by entering a written amendment executed by authorized representatives. The Contract may not be modified except by a written document signed by both parties. It is mutually understood and agreed that no alterations or variations of the terms of this Contract shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement not incorporated

workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

- (3) Withholding for unpaid wages and liquidated damages. The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

II. Construction and Repair Work. The following provisions apply to construction or repair work:

Compliance with the Davis-Bacon Act and Copeland "Anti-Kickback" Act. For all prime construction contracts in excess of \$2,000 the following terms shall apply:

(1) Davis-Bacon Act

- a. All transactions regarding this Contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.

(2) Copeland "Anti-Kickback" Act

- a. Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by

reference into this contract.

- b. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

EXHIBIT E - 1

Certification for Contracts, Grants, Loans, and Cooperative Agreements CERTIFICATION REGARDING LOBBYING (APPENDIX A, 44 C.F.R. PART 18)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Contractor, Primary Diagnostics, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

DocuSigned by:

Andrew Kobylinski (Vendor)

2/9/2021

7C2D23FDA8FD4A1...

Signature of Contractor's Authorized Official

Date

Andrew Kobylinski

Name

Chief Executive Officer

Title

EXHIBIT F
HIPAA BUSINESS ASSOCIATE Agreement

This Exhibit, the HIPAA Business Associate Agreement (“Exhibit”) supplements and is made a part of the underlying agreement (“Agreement”) by and between the County of Alameda, (“County” or “Covered Entity”) and Primary Diagnostics, Inc. (“Contractor” or “Business Associate”) to which this Exhibit is attached. This Exhibit is effective as of the effective date of the Agreement.

I. RECITALS

Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”); Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with 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”), the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”), and other applicable laws; and The Privacy Rule and the Security Rule in the HIPAA Regulations require Covered Entity to enter into a contract, containing specific requirements, with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314(a), 164.502(e), and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and as contained in this Agreement.

II. STANDARD DEFINITIONS

Capitalized terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those terms are defined in the HIPAA Regulations. In the event of an inconsistency between the provisions of this Exhibit and the mandatory provisions of the HIPAA Regulations, as amended, the HIPAA Regulations shall control. Where provisions of this Exhibit are different than those mandated in the HIPAA Regulations, but are nonetheless permitted by the HIPAA Regulations, the provisions of this Exhibit shall control. All regulatory references in this Exhibit are to HIPAA Regulations unless otherwise specified.

The following terms used in this Exhibit shall have the same meaning as those terms in the HIPAA Regulations: Data Aggregation, Designated Record Set, Disclosure, Electronic Health Record, Health Care Operations, Health Plan, Individual, Limited Data Set, Marketing, Minimum Necessary, Minimum Necessary Rule, Protected Health Information, and Security Incident.

The following term used in this Exhibit shall have the same meaning as that term in the HITECH Act: Unsecured PHI.

III. SPECIFIC DEFINITIONS

Agreement. “Agreement” shall mean the underlying agreement between County and Contractor, to which this Exhibit, the HIPAA Business Associate Agreement, is attached.

Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. section 160.103, the HIPAA Regulations, and the HITECH Act, and in reference to a party to this Exhibit shall mean the Contractor identified above. “Business Associate” shall also mean any subcontractor that creates, receives, maintains, or transmits PHI in performing a function, activity, or service delegated by Contractor.

Contractual Breach. “Contractual Breach” shall mean a violation of the contractual obligations set forth in this Exhibit.

Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. section 160.103, and in reference to the party to this Exhibit, shall mean any part of County subject to the HIPAA Regulations.

Electronic Protected Health Information. “Electronic Protected Health Information” or “Electronic PHI” means Protected Health Information that is maintained in or transmitted by electronic media.

Exhibit. “Exhibit” shall mean this HIPAA Business Associate Agreement.

HIPAA. “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

HIPAA Breach. “HIPAA Breach” shall mean a breach of Protected Health Information as defined in 45 C.F.R. 164.402, and includes the unauthorized acquisition, access, [use](#), or [Disclosure](#) of [Protected Health Information](#) which compromises the [security](#) or privacy of such information.

HIPAA Regulations. “HIPAA Regulations” shall mean the regulations promulgated under HIPAA by the U.S. Department of Health and Human Services, including those set forth at 45 C.F.R. Parts 160 and 164, Subparts A, C, and E.

HITECH Act. “HITECH Act” shall mean the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH Act”).

Privacy Rule and Privacy Regulations. “Privacy Rule” and “Privacy Regulations” shall mean the standards for privacy of individually identifiable health information set forth in the HIPAA Regulations at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

Secretary. “Secretary” shall mean the Secretary of the United States Department of Health and Human Services (“DHHS”) or his or her designee.

Security Rule and Security Regulations. “Security Rule” and “Security Regulations” shall mean the standards for security of Electronic PHI set forth in the HIPAA Regulations at 45 C.F.R. Parts 160 and 164, Subparts A and C.

IV. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE

Business Associate may only use or disclose PHI:

- A. As necessary to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or Disclosure would not violate the Privacy Rule if done by Covered Entity;
- B. As required by law; and
- C. For the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

V. PROTECTION OF PHI BY BUSINESS ASSOCIATE

- A. *Scope of Exhibit.* Business Associate acknowledges and agrees that all PHI that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording and electronic display, by Covered Entity or its operating units to Business Associate, or is created or received by Business Associate on Covered Entity's behalf, shall be subject to this Exhibit.
- B. *PHI Disclosure Limits.* Business Associate agrees to not use or further disclose PHI other than as permitted or required by the HIPAA Regulations, this Exhibit, or as required by law. Business Associate may not use or disclose PHI in a manner that would violate the HIPAA Regulations if done by Covered Entity.
- C. *Minimum Necessary Rule.* When the HIPAA Privacy Rule requires application of the Minimum Necessary Rule, Business Associate agrees to use, disclose, or request only the Limited Data Set, or if that is inadequate, the minimum PHI necessary to accomplish the intended purpose of that use, Disclosure, or request. Business Associate agrees to make uses, Disclosures, and requests for PHI consistent with any of Covered Entity's existing Minimum Necessary policies and procedures.
- D. *HIPAA Security Rule.* Business Associate agrees to use appropriate administrative, physical and technical safeguards, and comply with the Security Rule and HIPAA Security Regulations with respect to Electronic PHI, to prevent the use or Disclosure of the PHI other than as provided for by this Exhibit.
- E. *Mitigation.* Business Associate agrees 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 in violation of the requirements of this Exhibit. Mitigation includes, but is not limited to, the taking of reasonable steps to ensure that the actions or omissions of employees or agents of Business Associate do not cause Business Associate to commit a Contractual Breach.

- F. *Notification of Breach.* During the term of the Agreement, Business Associate shall notify Covered Entity in writing within twenty-four (24) hours of any suspected or actual breach of security, intrusion, HIPAA Breach, and/or any actual or suspected use or Disclosure of data in violation of any applicable federal or state laws or regulations. This duty includes the reporting of any Security Incident, of which it becomes aware, affecting the Electronic PHI. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized use or Disclosure required by applicable federal and/or state laws and regulations. Business Associate shall investigate such breach of security, intrusion, and/or HIPAA Breach, and provide a written report of the investigation to Covered Entity's HIPAA Privacy Officer or other designee that is in compliance with 45 C.F.R. section 164.410 and that includes the identification of each individual whose PHI has been breached. The report shall be delivered within fifteen (15) working days of the discovery of the breach or unauthorized use or Disclosure. Business Associate shall be responsible for any obligations under the HIPAA Regulations to notify individuals of such breach, unless Covered Entity agrees otherwise.
- G. *Agents and Subcontractors.* Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions, conditions, and requirements that apply through this Exhibit to Business Associate with respect to such information. Business Associate shall obtain written contracts agreeing to such terms from all agents and subcontractors. Any subcontractor who contracts for another company's services with regards to the PHI shall likewise obtain written contracts agreeing to such terms. Neither Business Associate nor any of its subcontractors may subcontract with respect to this Exhibit without the advanced written consent of Covered Entity.
- H. *Review of Records.* Business Associate agrees to make internal practices, books, and records relating to the use and Disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to Covered Entity, or at the request of Covered Entity to the Secretary, in a time and manner designated by Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Regulations. Business Associate agrees to make copies of its HIPAA training records and HIPAA business associate agreements with agents and subcontractors available to Covered Entity at the request of Covered Entity.
- I. *Performing Covered Entity's HIPAA Obligations.* To the extent Business Associate is required to carry out one or more of Covered Entity's obligations under the HIPAA Regulations, Business Associate must comply with the requirements of the HIPAA Regulations that apply to Covered Entity in the performance of such obligations.
- J. *Restricted Use of PHI for Marketing Purposes.* Business Associate shall not use or disclose PHI for fundraising or Marketing purposes unless Business Associate obtains an Individual's authorization. Business Associate agrees to comply with all rules governing Marketing communications as set forth in HIPAA Regulations and the HITECH Act,

including, but not limited to, 45 C.F.R. section 164.508 and 42 U.S.C. section 17936.

- K. *Restricted Sale of PHI.* Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement.
- L. *De-Identification of PHI.* Unless otherwise agreed to in writing by both parties, Business Associate and its agents shall not have the right to de-identify the PHI. Any such de-identification shall be in compliance with 45 C.F.R. sections 164.502(d) and 164.514(a) and (b).
- M. *Material Contractual Breach.* Business Associate understands and agrees that, in accordance with the HITECH Act and the HIPAA Regulations, it will be held to the same standards as Covered Entity to rectify a pattern of activity or practice that constitutes a material Contractual Breach or violation of the HIPAA Regulations. Business Associate further understands and agrees that: (i) it will also be subject to the same penalties as a Covered Entity for any violation of the HIPAA Regulations, and (ii) it will be subject to periodic audits by the Secretary.

VI. INDIVIDUAL CONTROL OVER PHI

- A. *Individual Access to PHI.* Business Associate agrees to make available PHI in a Designated Record Set to an Individual or Individual's designee, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. section 164.524. Business Associate shall do so solely by way of coordination with Covered Entity, and in the time and manner designated by Covered Entity.
- B. *Accounting of Disclosures.* Business Associate agrees to maintain and make available the information required to provide an accounting of Disclosures to an Individual as necessary to satisfy Covered Entity's obligations under 45 C.F.R. section 164.528. Business Associate shall do so solely by way of coordination with Covered Entity, and in the time and manner designated by Covered Entity.
- C. *Amendment to PHI.* Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. section 164.526. Business Associate shall do so solely by way of coordination with Covered Entity, and in the time and manner designated by Covered Entity.

VII. TERMINATION

- A. *Termination for Cause.* A Contractual Breach by Business Associate of any provision of this Exhibit, as determined by Covered Entity in its sole discretion, shall constitute a material Contractual Breach of the Agreement and shall provide grounds for immediate

termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. Contracts between Business Associates and subcontractors are subject to the same requirement for Termination for Cause.

- B. *Termination due to Criminal Proceedings or Statutory Violations.* Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which Business Associate has been joined.
- C. *Return or Destruction of PHI.* In the event of termination for any reason, or upon the expiration of the Agreement, Business Associate shall return or, if agreed upon by Covered Entity, destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
- D. If Business Associate determines that returning or destroying the PHI is infeasible under this section, Business Associate shall notify Covered Entity of the conditions making return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Exhibit to such PHI and limit further uses and Disclosures to those purposes that make the return or destruction of the information infeasible.

VIII. MISCELLANEOUS

- A. *Disclaimer.* Covered Entity makes no warranty or representation that compliance by Business Associate with this Exhibit, HIPAA, the HIPAA Regulations, or the HITECH Act 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. *Regulatory References.* A reference in this Exhibit to a section in HIPAA, the HIPAA Regulations, or the HITECH Act means the section as in effect or as amended, and for which compliance is required.
- C. *Amendments.* The parties agree to take such action as is necessary to amend this Exhibit from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, the HIPAA Regulations, and the HITECH Act.
- D. *Survival.* The respective rights and obligations of Business Associate with respect to PHI in the event of termination, cancellation or expiration of this Exhibit shall survive said termination, cancellation or expiration, and shall continue to bind Business Associate, its

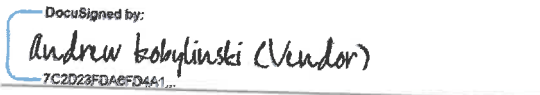
agents, employees, contractors and successors.

- E. *No Third Party Beneficiaries.* Except as expressly provided herein or expressly stated in the HIPAA Regulations, the parties to this Exhibit do not intend to create any rights in any third parties.
- F. *Governing Law.* The provisions of this Exhibit are intended to establish the minimum requirements regarding Business Associate's use and Disclosure of PHI under HIPAA, the HIPAA Regulations and the HITECH Act. The use and Disclosure of individually identified health information is also covered by applicable California law, including but not limited to the Confidentiality of Medical Information Act (California Civil Code section 56 *et seq.*). To the extent that California law is more stringent with respect to the protection of such information, applicable California law shall govern Business Associate's use and Disclosure of confidential information related to the performance of this Exhibit.
- G. *Interpretation.* Any ambiguity in this Exhibit shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA, the HIPAA Regulations, the HITECH Act, and in favor of the protection of PHI.

This EXHIBIT, the HIPAA Business Associate Agreement is hereby executed and agreed to by

CONTRACTOR:

Name: Primary Diagnostics, Inc.

By (Signature):  Andrew Kobylinski (Vendor)

Print Name: Andrew Kobylinski

Title: Chief Executive Officer

Date: 2/9/2021

QUESTIONNAIRE FOR DETERMINING THE WITHHOLDING STATUS

INSTRUCTIONS: This questionnaire is to be completed by the County department for services contracts and must be included as part of the contract package. Be sure to answer all of the questions in Sections I and II and to complete the certifications on page 2. Sections III and IV contain supplemental questions to be answered for contractors in certain service categories.

CONTRACTOR NAME: Primary Diagnostics, Inc. DEPT #: 425

TITLE/SERVICE: Software and technical support for vaccine scheduling and data interface

DEPT. CONTACT: Casey Zirbel PHONE: (510) 667-3147

I. INFORMATION ABOUT THE CONTRACTOR YES NO

- 1. Is the contractor a corporation or partnership? (X) ()
- 2. Does the contractor have the right per the contract to hire others to do the work agreed to in the contract? (X) ()
- 3. If the answer to BOTH questions is YES, provide the employer ID number here: 85-1163805
No other questions need to be answered. Withholding is not required.
- 4. If the answer to question 1 is NO and 2 is YES, provide the individual social security number here: _____
No other questions need to be answered. Withholding is not required.
- 5. If the answer to question 2 is NO, continue to Section II.

II. RELATIONSHIP OF THE PARTIES YES NO

- 1. Does the County have the right to control the way in which the work will be done, i.e., will the County be able to specify the sequence of steps or the processes to be followed if it chooses to do so? () ()
- 2. Is the contractor restricted from performing similar services for other businesses while contractor is working for the County? () ()
- 3. Will the contractor be working for more than 50% of the time for the County (50% = 20 hrs/wk; 80 hrs/mo)? () ()
- 4. Is the relationship between the County and the contractor intended to be ongoing? () ()

III. FOR CONSULTANTS, PROJECT MANAGERS, PROJECT COORDINATORS **YES** **NO**

- 1. Is the contractor being hired for a period of time rather than for a specific project? () ()
- 2. Will payment be based on a wage or salary (as opposed to a commission or lump sum)? () ()

IV. FOR PHYSICIANS, PSYCHIATRISTS, DENTISTS, PSYCHOLOGISTS **YES** **NO**

- 1. Will the agreement be with an individual who does not have an outside practice? () ()
- 2. Will the contractor work more than an average of ten hours per week?
IF THE ANSWER TO QUESTION 2 IS YES, ANSWER QUESTION 3. () ()
- 3. Will the County provide more than 20% of the contractor’s income? () ()
- 4. If the answer to either question 2, or if required, question 3 is NO, the entire answer is NO.

A “YES” answer to any of the questions in Section II, or, if applicable, Sections III or IV constitutes justification for paying the contractor through the payroll system as an “employee for withholding purposes.”

CERTIFICATIONS:

I hereby certify that the answers to the above questions accurately reflect the anticipated working relationship for this contract.

DocuSigned by:
Andrew Kobylinski (Vendor)
702023FDAGFD411...
Primary Diagnostics, Inc. CEO Signature

DocuSigned by:
Colleen
09204AE94C50405...
Alameda County Health Care Services Agency Director Signature

Andrew Kobylinski
Printed Name
2/9/2021
Date

Colleen Chawla
Printed Name
2/9/2021
Date