

## **COVID-19 TESTING SERVICES AGREEMENT**

**THIS COVID-19 TESTING SERVICES AGREEMENT** ("Agreement") is entered into as of March 4, 2021 (the "Effective Date"), by and between Seattle Children's Hospital ("Seattle Children's"), and Concrete School District (the "District"). Seattle Children's and the District are referred to herein individually as "Party" and collectively as "Parties".

Seattle Children's is a Washington nonprofit corporation with hospital, clinic, research, and other healthcare related operations in the greater Seattle-area of Washington State, and is recognized by the IRS as exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, as Seattle Children's is organized and operated exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Code.

As part of its charitable mission, Seattle Children's maintains a clinical laboratory as part of Seattle Children's Research Institute ("SCRI") that is duly certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and licensed under Washington law as a Medical Test Site to perform waived, moderate and high complexity laboratory testing.

- A. Abbott Diagnostics Scarborough, Inc. has developed a lateral flow immunoassay intended for the qualitative detection of nucleocapsid protein antigen from SARS-COV-2 in direct nasal swabs, and has received FDA Emergency Use Authorization for the BinaxNOW COVID-19 Ag Card test.
- B. Cue Health, Inc. has developed a molecular in vitro diagnostic test that aids in the detection and diagnosis of SARS-CoV-2 and is based on widely used nucleic acid isothermal amplification technology, and has received FDA Emergency Use Authorization for the Cue COVID-19 test.
- C. The BinaxNOW COVID-19 Ag Card test and Cue COVID-19 test shall be defined in this Agreement as the "Test(s)".
- D. As part of its Coronavirus testing strategy, the United States Health and Human Services Department ("HHS") has distributed millions of COVID-19 testing kits across the country, including approximately 300,000 Test kits to Seattle Children's for the purpose of developing a school-based COVID-19 testing program for school districts in Washington State (the "Testing Program").
- E. As one measure to help limit the spread of COVID-19, District desires to obtain Tests for students, teachers, administrators and other appropriate District employees or contractors ("Participating Individuals") who authorize, or whose parents or legal guardians authorize, such testing.
- F. District desires to engage Seattle Children's to perform Tests for Participating Individuals at District K-12 locations ("District Schools"), and Seattle Children's desires to perform such services, all as further described in this Agreement.

In consideration of the mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and legal sufficiency of which are acknowledged, the Parties agree as follows:

1. District Responsibilities.

- a. Test Administration Plan. District will develop an overall plan for Test administration at District Schools. District's overall plan will define which Participating Individuals are tested; when Participating Individuals may be tested; which District Schools will be included in the Testing Program; where Tests will be performed at each District School; and how the testing layout, staging and flow will be developed at each District School.
- b. District Personnel; Testing Team. District will make certain of its employees and contractors available to participate in the Testing Program at District Schools as members of Seattle Children's Testing Team (defined below). As described in Section 2.d of this Agreement, all District personnel who participate in the Testing Program as members of the Testing Team will receive appropriate training from Seattle Children's, and will be monitored and overseen by Seattle Children's.
- c. Personal Protective Equipment. District will provide personal protective equipment to its employees and contractors participating in the Testing Team.
- d. Participant Communications. District will be responsible for communications with Participating Individuals to inform them of the Test Program's administration plan at District Schools, including but not limited to Testing Protocols and any other rules or requirements of the Testing Program.
- e. Consent and Release Documentation. District will obtain from each Participating Individual, or from his or her parent or legal guardian, as applicable, a signed informed consent authorizing Seattle Children's to perform the Tests, and an authorization to allow Seattle Children's to disclose the results of Participating Individuals' Tests to District for the purpose of limiting the spread of COVID-19 using the form attached hereto at Attachment A.
- f. Positive Tests and Symptomatic Individuals. District will provide education and information to Participating Individuals who test positive or are experiencing symptoms of COVID-19. Seattle Children's will use good faith efforts to assist District with identifying resources for clinical care upon request. Neither the District nor Seattle Children's will be responsible for arranging for follow up care.

2. Seattle Children's Responsibilities.

- a. Test Procurement. Seattle Children's has arranged and received point-of-care testing systems and all related collection supplies for the Tests from HHS. Seattle Children's will use reasonable efforts to secure Tests in sufficient quantities for Seattle Children's to perform testing for Participating Individuals as requested by District. Seattle Children's will inform District as soon as reasonably possible if it is unable to accommodate a request for testing of a Participating Individual for any reason, including an insufficient supply of Tests or other equipment or supplies that are necessary to perform the specimen collection and testing.
- b. Testing Protocols. Seattle Children's will collaborate with District to design and carry out testing protocols for Participating Individuals at the District Schools that

are mutually agreeable to the Parties, complies with each Test's Emergency Use Authorizations ("EUAs") and complies with applicable law ("Testing Protocols"). The Testing Protocols will include processes for notifying and recommending or offering subsequent Tests for Participating Individuals who test positive.

- c. Pre-Arrival Information. Seattle Children's will obtain any pre-arrival symptom screening or other information from Participating Individuals necessary for their participation in the Testing Program through the STRAC App (defined below).
  - d. Testing Team; Performance of Tests. Seattle Children's will arrange for a team of personnel from Seattle Children's and from District (per Section 1.b), to perform Tests pursuant to the Testing Protocols ("Testing Team"). Seattle Children's will arrange for Testing Team to perform Tests for Participating Individuals using the specimen collection kit included with the Tests according to its instructions and EUAs. Seattle Children's will train all individuals participating in the Testing Team to collect COVID-19 specimens according to the EUAs and instructions included with each Test and specimen collection kit. Seattle Children's will oversee and monitor the Testing Team as reasonably necessary in Seattle Children's discretion.
  - e. STRAC System. Information regarding Test subjects and Test results will be captured using a web-based application developed by the Southwest Texas Regional Advisory Council ("STRAC"), a non-profit organization that has contracted with HHS to employ its comprehensive data collection system and reporting mechanism for school-based testing programs for K-12 students and staff. Seattle Children's will arrange for appropriate members of the Testing Team to have access to the STRAC system for comprehensive data collection and reporting.
  - f. Reporting Results. Test results will be reported to Participating Individuals automatically through the STRAC app. Seattle Children's will also require the Testing Team to report Test results to a designated District representative at the District School pursuant to Testing Protocols mutually agreed to by the Parties, and as permitted by the applicable provisions of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) ("District Representative"). District acknowledges that Seattle Children's will report test results and any other required information to state and federal public health authorities as required or permitted by applicable law. Seattle Children's will also provide aggregated de-identified reports to District regarding testing statistics.
  - g. No Billing Patients or Third Parties. Seattle Children's will not bill the District, any Participating Individual, or any other third party payer or insurer for the Tests.
3. Term. The term of this Agreement shall commence on the Effective Date, and shall remain in effect until either Party terminates this Agreement upon thirty (30) days' prior written notice to the other Party. Notwithstanding the foregoing, this Agreement will expire once there are no further Participating Individuals in need of Tests, or once Seattle Children's supply of Tests or related collection supplies has been exhausted.
4. Insurance.

- a. Seattle Children's. Throughout the Term of this Agreement, Seattle Children's shall procure and maintain, or cause to be maintained, professional liability insurance for Seattle Children's and its personnel with liability limits of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate. In the event of termination of this Agreement for any reason, this obligation to be insured for occurrences during the Term of this Agreement shall be binding on Seattle Children's and shall survive the termination or expiration of this Agreement and, if necessary, tail insurance shall be procured by Seattle Children's. Seattle Children's may maintain the insurance through a program of self-insurance in its sole discretion.
- b. District. Throughout the Term of this Agreement, District shall maintain a program of general liability insurance ("Program of Insurance") that is reasonable and customary in the marketplace for similarly situated organizations. District agrees to provide Seattle Children's with thirty (30) days' prior written notice of any material change to its Program of Insurance.

5. Indemnification.

- a. Seattle Children's shall indemnify, hold harmless, and defend District and its employees and contractors from and against all costs, expenses, claims, losses, judgments, injuries, and/or damages, including but not limited to reasonable attorneys' fees, arising from or relating to Seattle Children's negligent performance of the Tests in accordance with the CLIA certification thereof by Seattle Children's, except as to those caused by the negligent or wrongful acts or omissions of District, or its employees or contractors.
- b. District shall indemnify, hold harmless, and defend Seattle Children's and its employees and contractors from and against all costs, expenses, claims, losses, judgments, injuries, and/or damages, including but not limited to reasonable attorneys' fees, arising from or relating to any negligent or wrongful act or omission of District, or its employees or contractors (except as to those caused by the acts or omissions of Seattle Children's or its employees or contractor), including without limitation any unauthorized transmission of test results by District, its employees or contractors. District further agrees to indemnify, hold harmless, and defend Seattle Children's and its employees and contractors from and against all costs, expenses, claims, losses, judgments, injuries, and/or damages, including but not limited to reasonable attorneys' fees, arising directly out of any decision or action by District (including, without limitation, District's decisions or actions relating to opportunity, employment, promotion, discharge, working conditions, personnel benefits, other conditions of employment, and any labor or personnel laws and regulations) with respect to District's teachers, administrators, coaches, employees, contractors, or the Participating Individuals.
- c. The Parties agree that the foregoing obligations set forth in this Section shall survive termination of this Agreement for any reason.

6. LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES, OR LOST OR ANTICIPATED REVENUES OR PROFITS, ARISING FROM OR RELATING TO THIS

AGREEMENT OR THE SUBJECT MATTER HEREOF, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, AND EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SAME. THE LIMITATIONS IN THIS SECTION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

7. Compliance with Laws. Each Party shall perform under this Agreement in accordance with all applicable state and federal laws and regulations, including with respect to the confidentiality of personal and protected health information, including but not limited to the Health Insurance Portability and Accountability Act of 1996 as amended, and its implementing regulations.
8. Miscellaneous.
  - a. Use of Name; Public Statements. Except as required for purposes of performing its obligations under this Agreement, neither Party shall use the name, logo, likeness, trademarks, image or other intellectual property of the other Party for any advertising, marketing, endorsement or any other purposes without the specific prior written consent of an authorized representative of the other party as to each such use. Notwithstanding the foregoing, the Parties may publicly communicate the fact that the Parties have entered into this Agreement. The Parties agree to consult with one another and to coordinate the substance of any public comments prior to any public statement regarding this Agreement (including any termination or expiration).
  - b. Assignment. This Agreement is not assignable, in whole or in part, by either Party without the prior written consent of the others.
  - c. Amendment. This Agreement may be amended only in writing, signed by all Parties. Any written amendments shall be affixed hereto and shall become full conditions of this Agreement.
  - d. Severability. If any provision of this Agreement is invalid, illegal or unenforceable, such provision shall be considered severed from the rest of this Agreement, and the remaining provisions shall continue in full force and effects as if the invalid provision had not been included.
  - e. Waiver. The failure of a Party to object to or take affirmative action with respect to any conduct of the other Party which is in violation of the provisions of this Agreement shall not be construed as a waiver of that violation or of any future violations of the provisions of this Agreement.
  - f. Force Majeure. No Party shall be responsible for the non-performance of its obligations under this Agreement if such non-performance is caused by acts of God, acts of civil or military authority, civil disturbance, war, fires, laws, regulations, pandemic, or orders of any governmental body, agency or official ("force majeure event"). The Party so affected shall give notice to the other Party and shall do everything reasonably possible to resume performance. If the period of non-performance exceeds thirty (30) days from the receipt of notice of

the force majeure event, the party whose ability to perform has not been so affected may terminate this Agreement upon written notice.

- g. Entire Agreement. This writing expresses the Parties' entire agreement and understanding. No other terms or conditions, whether oral or in writing, shall be considered a part of the Parties' agreement.
- h. No Third Party Rights. The Parties do not intend the benefits of this Agreement to inure to any third person not a signatory hereto. Notwithstanding anything contained herein, or any conduct or course of conduct by any Party, before or after signing this Agreement, this Agreement shall not be construed as creating any right, claim or cause of action against any Party by any person or entity not a Party to this Agreement.
- i. Notices. Notices required under this Agreement shall be sent to the parties by electronic mail, at the addresses set forth below:

**TO SEATTLE CHILDREN'S:**

[schoolcovidtesting@seattlechildrens.org](mailto:schoolcovidtesting@seattlechildrens.org)  
Attn: Danielle Zerr, MD, MPH  
Chief, Pediatric Infectious Diseases

**TO DISTRICT:**

Concrete School District  
Attn: Wayne Barrett  
[wbarrett@concrete.k12.wa.us](mailto:wbarrett@concrete.k12.wa.us)

AND

[generalcounsel@seattlechildrens.org](mailto:generalcounsel@seattlechildrens.org)

The subject line of the electronic mail shall begin with "LEGAL NOTICE".


"Business Day" is any day that is not a Saturday, Sunday, or Washington State holiday. A notice shall be deemed delivered on the day sent if sent by 5:00 p.m. PST on a Business Day, and otherwise shall be deemed delivered on the first Business Day after the day sent.

- j. Counterparts. This Agreement may be executed by the Parties by exchange of signature pages by mail, fax or email (if email, signature pages in Adobe PDF or similar format) in counterparts, each of which shall be deemed an original and all of which shall together constitute one agreement.


[SIGNATURE PAGE FOLLOWS]

The Parties have caused this Agreement to be executed by their duly authorized officers, as of the day and year first above written.

**SEATTLE CHILDREN'S HOSPITAL**

Signature:   
Print Name: Eric Tham  
Title: Interim Senior Vice President, SCRI  
Date: April 29, 2021

**CONCRETE SCHOOL DISTRICT**

Signature:   
Print Name: Wayne Barrett  
Title: Superintendent  
Date: March 8-2021

Attachment A

**AUTHORIZATION TO DISCLOSE, USE AND REDISCLOSE MEDICAL INFORMATION**  
**("Authorization")**

I, the undersigned, hereby authorize: Seattle Children's Research Institute ("Seattle Children's") to disclose the results of my or my dependent's COVID-19 tests and information related to my or my dependent's COVID-19 test results ("Medical Information") to the Concrete School District (the "District") for the purpose of limiting the spread of COVID-19 to District's students, families, teachers, coaches, administrators and other personnel.

**Notice.** I understand that health care providers are required by law to keep the Medical Information confidential. I understand and agree that if I have authorized the disclosure of the Medical Information to someone who is not legally required to keep it confidential, it may be subject to redisclosure and no longer protected by state or federal confidentiality laws.

**Eligibility for Treatment.** I understand that no treatment, payment, enrollment, or eligibility for benefits will be conditioned on whether I sign this Authorization.

**Revocation.** I may revoke this Authorization at any time prior to Seattle Children's relying on Seattle Children's right to disclose, use, and/or redisclose the Medical Information, as applicable. Revocation must be in writing, signed by me, and received by Seattle Children's prior to Seattle Children's disclosure of the Medical Information. I understand that a revocation is not effective to the extent that Seattle Children's has already acted in reliance on this Authorization.

**Expiration.** Unless sooner revoked, or unless required under applicable state law to expire on a specific earlier date, this Authorization will expire one (1) year from the date signed below.

**Copy of Authorization.** I understand that I am entitled to receive a copy of this Authorization.

**I understand, agree to, and am voluntarily signing this Authorization.**

_____ My Name	_____ My Signature	_____ Today's Date
<b>If applicable:</b>		
_____ Student's Name	_____ My Relationship to Student	_____ Student's Date of Birth