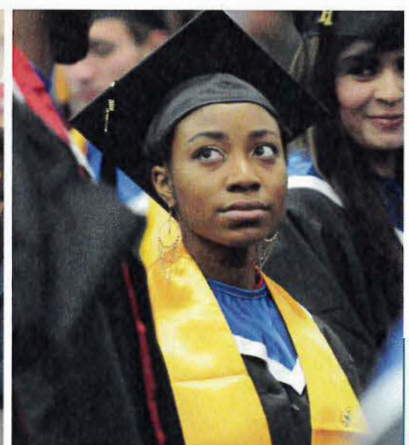




BOARD OF TRUSTEES AGENDA

September 1, 2021



Elgin
Community
College

Bright Choice. Bright Future.

1700 Spartan Drive • Elgin, IL 60123-7193 • 847-697-1000 • elgin.edu

**SPECIAL BOARD MEETING
SEPTEMBER 1, 2021**

6:00 p.m. Open Meeting

IN-PERSON ATTENDANCE

Building E
Elgin Community College
1700 Spartan Drive
Elgin, IL 60123

Virtual Attendance for Audience

<https://elgin-edu.zoom.us/j/9773211557>

PH: 1-312-626-6799 Meeting ID: 977 3211 1557#

With the current mitigation status, the September 1, 2021 Special Board Meeting will be conducted in-person. Members of the public are welcome to attend in person but are encouraged to attend virtually due to limited seating at this time.

Anyone wishing to provide public comment is welcome to do so at the appropriate time indicated on the agenda. Written comments can be sent to dkerruish@elgin.edu in advance of the meeting by 5 p.m.

AGENDA

Call to Order by Presiding Officer

- 1. Roll Call**
- 2. Pledge of Allegiance**
- 3. Presentation**
 - A. COVID-19 Mitigation Protocols**
- 4. President's Comments**

Actions

- 5. Intergovernmental Agreement between Elgin Community College District 509 and the Board of Trustees of the University of Illinois for Shield IL COVID-19 Testing Support** **1**
- 6. COVID-19 Testing Services with Vitality Urgent and Primary Care** **21**
- 7. Audience Wishing to Address the Board**
- 8. Old Business**
- 9. New Business**

**SPECIAL BOARD MEETING
SEPTEMBER 1, 2021**

AGENDA

10. Recess to Closed Session

- A. To consider the appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the college...
- B. To discuss litigation, when an action...has been filed...or when the public body finds that an action is probable or imminent...
- C. To consider collective negotiation matters...for one or more classes of employees...all pursuant to Chapter 5 of the *Illinois Compiled Statutes* Sections 120/2 (c) (1, 11 and 2 respectively).

11. Reconvene Open Session

Adjournment

Next regular board meeting: 6:30 p.m. Tuesday September 14, 2021

**INTERGOVERNMENTAL AGREEMENT BETWEEN ELGIN COMMUNITY
COLLEGE DISTRICT 509 AND THE BOARD OF TRUSTEES OF THE UNIVERSITY
OF ILLINOIS FOR SHIELD IL COVID-19 TESTING SUPPORT**

Recommendation

The administration recommends that the Board of Trustees approves the Intergovernmental Agreement with the Board of Trustees of the University of Illinois for Shield IL COVID-19 on-site testing which allows the College to conduct onsite COVID-19 testing and comply with Illinois Executive Order 2021-21 (COVID-19 Executive Order No. 87).



Dr. David Sam, President

Background

The purpose of this agreement is for the College to provide onsite COVID-19 testing for students, employees, and community members. Testing will be free of charge to all who request a COVID-19 test. Shield IL is a screening and diagnostic testing program that deploys the University of Illinois' PCR COVID Shield saliva test deployed across the state. Shield Illinois's mission is an example of the University of Illinois' land-grant mission, as a non-profit unit working to control the spread of COVID-19 across the state of Illinois, safely open schools, protect workplaces and save lives. Elgin Community College is responsible for the daily management of the collection partner (if available), hiring staff if required to self-collect, providing a location for collection, and communication to constituents.

Funding Source: Higher Education Emergency Relief Funds (HEERF)

Staff Contact: Dr. Kimberly Wagner, Vice President, Business and Finance,
847-214-7728

COVID-19 TESTING SUPPORT AGREEMENT

(PUBLIC PARTNER - MARCH 2021 IGA)

THIS COVID-19 TESTING SUPPORT AGREEMENT (“**Agreement**”) is made on this 1 day of September, 2021 (“**Effective Date**”), by and between Board of Trustees for Community College District 509 (“**Customer**”) and The Board of Trustees of the University of Illinois (“**University**”). Customer and University may be referred to herein individually as a “**Party**,” and collectively as the “**Parties**.”

WITNESSETH

WHEREAS, University provides coordination, logistics, order facilitation, billing, set-up help, results reporting and customer support for COVID-19 testing using University’s rapid rtPCR testing methodology (the “**U of I Test Method**”), and connects customers with testing laboratories and collection sites to simplify COVID-19 testing for workplaces, schools, universities, and other institutions;

WHEREAS, Customer desires to contract with University to facilitate access to COVID-19 testing services using the U of I Test Method for its employees, contractors, students, agents and/or others for whom Customer requires COVID-19 testing services to be performed (each, an “**End User**” and collectively, the “**End Users**”);

WHEREAS, University agrees to arrange for COVID-19 testing services using the U of I Test Method to be provided to Customer and its End Users and Customer agrees to accept such services on the terms and conditions set forth herein; and

WHEREAS, the Parties enter into this agreement pursuant to their authority under the Intergovernmental Cooperation Act, 5 ILS 220/ et seq.

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

AGREEMENT

1. UNIVERSITY SERVICES. Throughout the term of this Agreement:

1.1. University shall use reasonable efforts to provide to Customer the services set forth in the Statement of Work attached hereto as Exhibit A (the “**Services**”). The Statement of Work will designate a primary contact for Customer who will be reasonably available to University for communications with University regarding the Services under the Statement of Work;

1.2. To provide the Services to Customer, the Parties hereto acknowledge and agree that University contracts with laboratories, software providers and additional third parties (collectively, “**Service Providers**”) to deliver to Customer specimen collection services, laboratory testing using the U of I Test Method, and reporting of COVID-19 testing results using a designated software platform (the “**Results Platform**”). Provided Customer has secured Consents described in Section 2.1, University shall provide Customer with the End Users’ test results consisting of a daily “flat

file and call center report” with specified data elements. If Customer has secured the Consents, or has made testing of End User mandatory, University shall provide Customer with its End Users’ test results as soon as practicable after the University’s testing laboratory receives a specimen.

1.3. Service Providers are independent contractors of University;

1.4. University reserves the right to subcontract the performance of certain of its obligations under the Statement of Work to Service Providers and to fulfill certain of its obligations under the Statement of Work by an affiliate without prior notice to Customer.

1.5. University represents and warrants that the Services and its “**University Policies and Procedures**” comply with all applicable federal and state laws.

2. DUTIES OF CUSTOMER. Throughout the term of this Agreement:

2.1. Customer shall be responsible for obtaining consents, including authorization and releases from End Users with respect the release of End Users’ test results and any other data to Customer, including where applicable, necessary consent from parents or guardians for those individuals who are under the age of majority (“**Consents**”). For the avoidance of doubt, Customer hereby represents and warrants to University that, prior to University’s performance of Services, including its arranging for COVID-19 testing services to be provided to Customer’s End Users, Customer has or will have either initiated mandatory testing of End Users in a manner not requiring Consents, or obtained all necessary Consents for such testing, as well as all necessary Consents to release any and all test results to Customer, if University is so directed by Customer, and Customer further acknowledges and agrees that University may rely upon such representation and warranty;

2.2. Customer acknowledges that University does not control the actual performance of the Service Providers, and the Services may be delayed, frustrated, or made impossible due to circumstances that are unforeseeable or beyond the reasonable control of University, including but not limited to changes to legal requirements or guidance, availability of materials required for Services, and laboratory capacity. In such circumstances, University will inform Customer of any delays or other barriers and take commercially reasonable steps to resume delivery of the Services, including working with Customer to find an alternative Service Providers to perform the Services at no additional cost to Customer;

2.3. Customer acknowledges that that Services are provided “as-is”. Customer recognizes that there are inherent limitations to the COVID-19 testing process, including limitations of U of I Test Method, limitations due to collection methods, limitations introduced as a result of shipping or other delivery methodology, and other perhaps unforeseen limitations. Customer accepts these limitations in entering into this Agreement;

2.4. Customer agrees to use commercially reasonable efforts to cooperate with Service Providers in their performance of the Services, including following the University’s policies and procedures applicable to Customer, as may be amended from time to time (the “**University Policies and Procedures**”). University will: make University Policies and Procedures available to Customer in an accessible web-based format (the “**University Portal**”); notify Customer of changes to University Policies and Procedures; and provide accurate information in response to any questions concerning ambiguity in data provided regarding End Users. All information

provided to End Users by Customer regarding the testing procedures shall be true, correct, and accurate and in compliance with the University Policies and Procedures, and shall not be misleading or otherwise contain misrepresentations;

2.5. Customer covenants that it will not submit claims to, and will not otherwise seek reimbursement or payment from, any insurance, health plan or other commercial third party payor, or from Medicaid, Medicare, or any government payor, for any portion of the Services, whether provided by Service Providers or directly by University, unless authorized directly in writing by University; and

2.6. Customer covenants that it shall not make available or sell the U of I Test Method or University Policies or Procedures on its own to any third party and that the Services acquired herein are solely for Customer's use and not with a view to, or for resale in connection with, distribution to others at any time without the University's consent.

3. COMPENSATION.

3.1. University shall provide Services to Customer free of charge under the terms of an intergovernmental agreement ("IGA") with the Illinois Department of Public Health ("DPH") and associated work order.

3.2. University is not obligated to provide Services in excess of those funded by the IGA.

3.3. For the avoidance of doubt, University shall be solely responsible for compensating the Service Providers.

4. TERM AND TERMINATION.

4.1. Term. The initial term of this Agreement shall be effective as of the Effective Date and terminate on December 31, 2021. This Agreement may be extended by mutual written agreement of the Parties, which is deemed granted for interval testing programs, or earlier terminated in accordance with the terms of this Agreement.

4.2. Termination. Either Party may terminate this Agreement immediately upon breach of this Agreement by the other Party if said breach is not cured within (10) days of written notice of said breach to the breaching Party. Either Party may terminate this Agreement without cause upon thirty (30) days written notice to the other Party. In the event of nonpayment of undisputed fees by Customer within the applicable payment period, University may, in its sole discretion, immediately terminate this Agreement.

4.3. Effects of Termination. Upon termination of this Agreement for any reason, with or without cause, no Party shall have any further obligation hereunder except for (i) obligations accruing prior to the date of termination, and (ii) obligations, promises or covenants contained herein which are expressly made to extend beyond the term of this Agreement. University shall be entitled to payment of all fees or charges for services provided through the date of termination.

5. LIMITATION OF LIABILITY.

5.1. EXCEPT FOR DAMAGES ARISING OUT OF A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE TO THE OTHER PARTY FOR ANY PUNITIVE, CONSEQUENTIAL, INCIDENTAL, SPECIAL, REMOTE, EXEMPLARY, COLLATERAL, SPECULATIVE, OR INDIRECT DAMAGES OF ANY KIND (INCLUDING ECONOMIC DAMAGES, DAMAGES ARISING OUT OF INJURY TO PERSONS OR PROPERTY, LOST PROFITS, LOST REVENUE, LOSS OF BUSINESS, OR LOSS OF OPPORTUNITY) ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT OR THE BREACH OR ALLEGED BREACH HEREOF, REGARDLESS OF FAULT, REGARDLESS OF A PARTY HAVING BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF LEGAL THEORY OR BASIS.

5.2. EXCEPT FOR THE INDEMNIFICATIONS CONTAINED HEREIN, THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY FOR ANY DAMAGES OR OTHER AMOUNTS ARISING OUT OF, UNDER OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, OR THE BREACH OR ALLEGED BREACH HEREOF, SHALL NOT EXCEED FEES PAID IN CONNECTION WITH THE SERVICES UNDER WHICH SUCH LIABILITY AROSE.

5.3. EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, UNIVERSITY DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. ALL IMPLIED WARRANTIES AS TO SATISFACTORY QUALITY, PERFORMANCE, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND NON-INFRINGEMENT ARE HEREBY EXPRESSLY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

5.4. THE PARTIES ACKNOWLEDGE THAT THE FEES PAYABLE HEREUNDER ARE BASED IN PART ON THE LIMITATIONS CONTAINED IN THIS SECTION 5, AND THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

5.5. In the event that University fails to materially perform any Service in breach of this Agreement, Customer's sole and exclusive remedy shall be, upon reasonable notice to University, and at Customer's request, re-performance by University of such Service as soon as reasonably practicable at no additional cost to Customer or a refund of payment for Services not provided.

6. INDEMNIFICATION.

6.1. Indemnification Obligations. To the extent permitted by law and without waiving sovereign immunity, Customer and University will indemnify, defend and hold the other (including such Party's officers, directors, employees, volunteers, and agents) harmless from and against any and all losses, claims, suits, damages, and liabilities from third parties based upon, arising out of or attributable to the negligent acts and or omissions of such indemnifying Party, its directors, officers, employees, volunteers and or agents and pertaining to the Services provided hereunder.

6.2. Procedures. If any claim covered by the foregoing indemnity shall be asserted against a Party, such Party shall notify the indemnifying Party promptly and tender its defense to the indemnifying Party, in which case the indemnifying Party will provide qualified attorneys, consultants, and other appropriate professionals to represent the indemnified Party's interests at the indemnifying Party's sole expense. Notwithstanding anything herein to the contrary, should

the indemnified Party choose to undertake its own defense, choosing the attorneys, consultants, and other appropriate professionals to represent its interests, the indemnified Party will be solely responsible for and pay the reasonable fees and expenses of such attorneys, consultants, and other professionals. An indemnifying Party shall not settle any action without the indemnified Party's prior written consent.

6.3. Survival. The provisions of this Section 6 shall survive any expiration or termination of this Agreement.

7. **INSURANCE.** Each Party, at its sole expense, shall have in effect liability insurance coverage of such types and in such amounts as are customary for a business performing the obligations of such party hereunder, including, but not limited to, commercial general liability, cyber liability insurance, workers compensation and errors and omissions coverage.

8. **MISCELLANEOUS.**

8.1. **Confidentiality.**

8.1.1. When used in this Agreement, the term "Confidential Information" means confidential and proprietary information disclosed by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**") in connection with performance of the Services hereunder that (a) prior to disclosure, is marked with a legend indicating its confidential status or (b) is disclosed orally or visually, if the Disclosing Party identifies such information as confidential at the time of disclosure. The U of I Test Method and the University Policies and Procedures are University Confidential Information. The term "Confidential Information" does not include information to the extent that it (a) is known to the Receiving Party when disclosed by the Disclosing Party and the Receiving Party does not then have a duty to maintain its confidentiality, (b) is or becomes publicly known through no act or fault of the Receiving Party, (c) is rightfully obtained by the Receiving Party from a third party who is not subject to a confidentiality obligation to the Disclosing Party, (d) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information or (e) is required to be disclosed by law or court order, provided that the Receiving Party promptly notifies the Disclosing Party of such a lawful disclosure order to allow Disclosing Party an opportunity to intervene or challenge.

8.1.2. The Receiving Party acknowledges that, as between the Parties, the Disclosing Party is and will remain the sole owner of the Disclosing Party's Confidential Information. For a period of five (5) years after the termination or expiration of this Agreement, the Receiving Party will take reasonable precautions to protect the confidentiality of such Confidential Information, and will not disclose or use any such Confidential Information except as necessary to perform its obligations under this Agreement. If the Receiving Party is required by law or court order to disclose any of the Disclosing Party's Confidential Information, the Receiving Party may disclose such Confidential Information as so required, provided that the Receiving Party gives the Disclosing Party reasonable advance notice of the disclosure (if possible in the circumstances) and reasonably cooperates with the Disclosing Party, at the Disclosing Party's request and expense, to obtain a protective order or otherwise limit the disclosure.

8.2. Independent Relationship. It is understood that Customer and University are independent contractors engaging in the operation of their own respective businesses. Neither Party is, or is to be considered as, the agent or employee of the other Party for any purposes whatsoever.

8.3. Waiver. No waiver of any breach or failure by either Party to enforce any of the terms or conditions of the Agreement at any time, in any manner limit or waive such Party's right thereafter to enforce and to compel strict compliance with every term and condition hereof.

8.4. Severability. The invalidity or unenforceability of any covenant, agreement, term or condition of this Agreement or the application thereof to any person or circumstance shall not affect the validity, enforceability or applicability of any other provision in this Agreement. Furthermore, it is the Parties' intent that any unenforceable provision be construed and limited by any court that considers the matter so as to render it reasonable and enforceable.

8.5. Other Obligations. The Parties represent and warrant that proceeding and performing hereunder is not inconsistent with any contractual obligations it has with any third party and shall not be inconsistent with any contractual obligations it may have hereafter with any third party.

8.6. Entire Agreement; Amendment. This Agreement, together with referenced attachments, constitutes the entire Agreement between Customer and University with respect to the subject matter hereof and supersedes any prior agreements or understandings. It may be modified only in writing signed by both Parties.

8.7. Notices. All notices hereunder must be sent in writing via certified U.S. Mail services as follows:

If to University: SHIELD Illinois
349 Henry Administration Building
506 South Wright St.
Urbana, Illinois 61801

If to Customer: Elgin Community College
Attn: Kimberly Wagner, B205.12
1700 Spartan Drive
Elgin, Illinois 60123

With a copy to: Elgin Community College
Attn: Respicio Vazquez, General Counsel
1700 Spartan Drive
Elgin, Illinois 60123

8.8. Headings. The paragraph headings in this Agreement are for convenience only and shall not affect the interpretation of the Agreement.

8.9. Counterparts. This Agreement may be executed in two counterparts, each of which will be an original, and each counterpart will constitute the same Agreement.

8.10. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois, without regard to conflicts of law principles.

8.11. Assignment. Neither Party may assign any rights or delegate any duties under this Agreement without the express prior written consent of the other, except as permitted in Section 1.4. Any attempted assignment or delegation in violation of this provision shall be void and have no binding effect.

8.12. Binding Effect. This Agreement shall be binding upon and inure to the benefit of all the Parties hereto and their successors and assigns.

8.13. Force Majeure. The Parties shall be excused for failures and delays in the performance of their respective obligations under this Agreement due to any cause beyond the control and without the fault of such Party including without limitation, any government order, act of God, war terrorism, riot or insurrection, law or regulation, strike, flood, fire, explosion, pandemic, epidemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions, or inability due to any of the aforementioned causes to obtain necessary labor, materials or facilities. This provision shall not, however release such Party from using its commercially reasonable efforts to avoid or remove such cause and such Party shall continue performance hereunder with the utmost dispatch whenever such causes are removed. Upon claiming any such excuse or delay for non-performance, such Party shall give prompt written notice thereof to the other Party, provided that failure to give prompt written notice thereof to the other Party provided that failure to give such notice shall not in any way limit the operation of this provision.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

Board of Trustees for Community College
(Customer)

The Board of Trustees of the University of
Illinois (University)

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved for legal form by the Office of University Counsel, DS 03/2021

EXHIBIT A

Statement of Work

This Statement of Work (the “**SOW**”) is entered into as of the date of execution of the COVID-19 Testing Support Agreement (the “**Effective Date**”) by and between The Board of Trustees of the University of Illinois (“**University**”), individually and as agent for the Service Providers (as defined in the COVID-19 Testing Support Agreement, the “**Agreement**”), and Board of Trustees for Community College District 509 (the “**Customer**”).

Customer is contracting with University in order for University to provide the services described herein through itself and the Service Providers (including, but not limited to, laboratory, specimen collection and software providers) necessary to conduct COVID-19 testing as set forth herein.

All capitalized terms used herein without definition shall have the meaning assigned to them in the Agreement.

1. Contacts

Customer understands and agrees that University is the sole contracting party, and agrees to contact only University with questions, concerns, and/or support requests. Support requests shall be directed to:

General Support Tickets:	shieldilpartnerhelp@uillinois.edu
Patient Support (24/7):	(217) 265-6059
Test Site Support (24/7):	(217) 265-5455

The following will be the lead contact at the Customer for interfacing with University:

Name:	Emily Kies
Title:	Sr. Director, Emergency Management
Email address:	ekies@elgin.edu
Cell phone number:	224-325-1125

2. Ordering

Customer shall order from University COVID-19 testing services to be performed by Service Providers pursuant to the then-current version of University Policies and Procedures as made available online through the University Portal. Customer shall order a minimum of 5,000 tests during the Term. Thereafter, additional tests may be ordered on a monthly basis, in advance, upon thirty (30) days' notice to University.

3. University's Testing Support Services

University's Testing Support Services include all Services described in the University Policies and Procedures, including but not limited to the following:

- a. Any equipment required
- b. End User Consent for specimen collection and reporting results to End Users as applicable under the terms of this Agreement
- c. Reporting results to Customer as applicable under the terms of this Agreement
- d. Laboratory analysis of specimens collected using U of I Test Method
- e. Customizable communications materials in electronic format to assist Customer in explaining the test purpose, process, collection site locations, and results reporting functionality to End User
- f. Results Platform, which provides the following functionality:
 - a. collective reporting of results to Customer contact (if authorized by End User)
 - b. individual reporting of results to End Users
 - c. reporting to the relevant public health authorities
- g. Access to University Policies and Procedures

Terms and Conditions for COVID-19 Specimen Collection and Courier Services

Parties:

- a) the entity listed on the face of the purchase order these terms accompany ("Collection Partner"); and,
- b) The Board of Trustees of the University of Illinois ("University")

The parties' complete and exclusive agreement regarding the subject matter ("Agreement") includes: the Purchase Order and all change orders issued by University; and these Terms and Conditions for COVID-19 Specimen Collection and Courier Services. In the event of a conflict between the terms of a separately signed contract and all Purchase Order terms and conditions, the terms of the signed contract shall control.

BACKGROUND

- University arranges for high-volume, low-cost, accurate COVID-19 testing services to be provided using University's rapid rtPCR testing methodology ("U of I Test Method") to third-parties (each a "Customer") located throughout the State of Illinois;
- University maintains a network of CLIA-certified laboratories across the state of Illinois that are capable of performing COVID-19 testing using the U of I Test Method (the "Labs") for Customers;
- To provide testing services for Customers, University also maintains a network of specimen collection sites across the State of Illinois (each, a "Site") that collect specimens from Customer's end users (each, an "End User" and collectively, the "End Users") and deliver such specimens to the Labs for testing as directed by University;
- Collection Partner desires to serve as a Site for University, to provide specimen collection services to Collection Partner's End Users and to deliver the specimens collected at the Site to one or more Labs as directed by University and University agrees to include Collection Partner within its network of Sites on the terms and conditions as are set forth herein; and
- the Parties enter into this agreement pursuant to their authority under the Intergovernmental Cooperation Act, 5 ILS 220/ et seq.

1. COLLECTION SITE PARTICIPATION AGREEMENT.

- 1.1. By issuance of a Purchase Order and acceptance by Collection Partner, the Parties have entered into a COVID-19 Testing Support Agreement, and University agrees to include Collection Partner as a Site at which Collection Partner's End Users may register to obtain COVID-19 testing services as requested from time to time.
- 1.2. Collection Partner shall designate its times and days of specimen collection in consultation with University.

- 1.3. Collection Partner's End Users shall register at Site for testing, subject to the Collection Partner's designated Site's capacity and capability to perform the requested services outlined in Section 2, in accordance with the University policies and procedures provided by University to Customer, as may be amended from time to time. University represents and warrants that the University Policies and Procedures comply with applicable federal and state laws.
- 1.4. University shall furnish to Collection Partner a standing order substantially similar in form to Exhibit A ("Order"), issued by a physician currently licensed and in good standing in the State of Illinois, that authorizes Collection Partner to collect and submit End Users' saliva specimens to Labs for SARS-CoV-2 molecular testing analysis using the U of I Test Method in accordance with the conditions of the Order.

2. COLLECTION AND COURIER SERVICES.

- 2.1. Collection Partner shall register End Users who present themselves for specimen collection at the Site in compliance with University's policies and procedures for specimen collection, as may be amended from time to time (the "Specimen Collection Policies and Procedures"). University will: make Specimen Collection Policies and Procedures available to Collection Partner in an accessible web-based format ("University Portal"); notify Collection Partner of changes to Specimen Collection Policies and Procedures; and provide accurate information in response to any Collection Partner questions concerning ambiguity in Specimen Collection Policies and Procedures.
- 2.2. Collection Partner shall perform such registration using a University-provided information management tracking system accessed through an electronic health record platform (the "Results Platform"), which shall be used to collect and track End User and specimen information;
- 2.3. Such registration process shall include the generation by Collection Partner of a unique barcode label (the "Label") to be placed on the test-tube used to contain End User's collected saliva sample (the "Specimen") in accordance with the Specimen Collection Policies and Procedures. Collection Partner understands the importance of maintaining the accuracy of the Labels, which will be used by Labs and University to track the Specimen and report test results on the Results Platform. Collection Partner shall immediately report any issues with Label generation and tracking to University as set forth in the Specimen Collection Policies and Procedures;
- 2.4. When an End User presents at the Site, Collection Partner shall collect the Specimen from the End User, including End User's consent if needed, in a manner consistent with University's Specimen Collection Policies and Procedures, applicable laws, and public health guidelines issued by the State of Illinois, the Centers for Disease Control and Prevention and/or other applicable regulatory agencies ("Collection Services");
- 2.5. Collection Partner shall employ or contract with an appropriate number of qualified personnel ("Personnel") as needed to perform the Collection Services at the Site. All Personnel shall be fully qualified and appropriately licensed (as applicable) to perform the Collection Services;
- 2.6. Collection Partner shall maintain proper infection control procedures, provide for proper Specimen storage and arrange for proper hazardous material waste removal as required by the Specimen Collection Policies and Procedures;

- 2.7. Collection Partner shall timely deliver or arrange for the delivery of the Specimens to one or more Labs as directed by University in accordance with the Specimen Collection Policies and Procedures (the "Courier Services"). If the Lab closest to Collection Partner has reached capacity for Specimen processing, Collection Partner may inquire with University about alternate Labs that may have capacity, and Collection Partner may, at Collection Partner's expense, deliver Specimens to an alternate Lab rather than accept longer processing time for Specimens. In the event Collection Partner is unable to provide the Courier Services itself, Collection Partner may delegate such Courier Services to the University, provided however, Collection Partner shall be responsible for all costs associated with the Courier Services so delegated;
- 2.8. Collection Partner shall notify the University in the event Collection Partner does not have anticipated capacity and capability (for example due to workload fluctuations or resource needs) to complete the requested Collection Services or Courier Services in accordance with the Specimen Collection Policies and Procedures and shall collaborate with University to make arrangements to transfer Customers and associated End Users to another Site.
- 2.9. Collection Partner shall promptly notify University of any Customer or End User dissatisfaction or complaint regarding Collection Partner's Collection Services and/or Courier Services, and University shall likewise notify Collection Partner if it becomes aware of any such dissatisfaction or complaint;
- 2.10. Collection Partner agrees to use reasonable efforts to maintain the integrity of the Specimen collected and transported and shall at all times follow the requirements for same as set forth in the Specimen Collection Policies and Procedures. Collection Partner shall be solely responsible for the integrity of the Specimen collected and transported by Collection and in no event shall University be responsible for any loss or damage to any Specimen handled by Collection Partner for transport or delivery hereunder; and
- 2.11. Notwithstanding any other standards of performance for Collection Services and Courier Services set forth herein and in the Specimen Collection Policies and Procedures, Collection Partner shall furnish the Collection Services and Courier Services with the same degree of skill and care that would be exercised by a reasonably prudent specimen collection and specimen delivery provider in similar settings under similar circumstances.
- 2.12. University shall facilitate the Collection Services and Courier Services as set forth in the Specimen Collection Policies and Procedures.

3. COMPENSATION.

- 3.1. Collection Partner shall solely be responsible for all of its actual costs associated with maintaining its Personnel, space, utilities, insurance, and all other usual and customary operational costs in performing the Collection Services and Courier Services.
- 3.2. Under the terms of an intergovernmental agreement ("IGA") with the Illinois Department of Public Health ("DPH") and associated work order #150000211, University shall compensate Collection Partner in an amount equal to \$10.00 per specimen collected through the Collection Partner's Site and successfully processed ("Collection Fee"), with results transmitted to the End

User. Quantities and payment amounts listed on the accompanying Purchase Order are estimated, and payments will only be made in compliance with this section.

- 3.3. University is not obligated to provide compensation in excess of that funded by the IGA.
- 3.4. Payment of Collection Fee shall be made on a quarterly basis subject to Collection Partner completing all University requirements to become a permanent vendor in the University's payment system and in accordance with University's invoice and payment policies.

4. TERM AND TERMINATION.

- 4.1. Term. The term of the Purchase Order shall commence on the date issued and shall continue until December 31, 2021, unless sooner terminated as set forth herein or if the Parties' Testing Support Agreement terminates (the "Term"). This Agreement may be extended by issuance and acceptance of a new Purchase Order extending the term.
- 4.2. Termination. Either Party may terminate this Agreement immediately upon breach of this Agreement by the other Party if said breach is not cured within (10) days of written notice of said breach to the breaching Party. Either Party may terminate this Agreement without cause upon thirty (30) days written notice to the other Party.
- 4.3. Effects of Termination. Upon termination of this Agreement for any reason, with or without cause, no Party shall have any further obligation hereunder except for (i) obligations accruing prior to the date of termination, and (ii) obligations, promises or covenants contained herein which are expressly made to extend beyond the term of this Agreement.

5. INSURANCE. Collection Partner shall maintain, at its sole cost and expense, throughout the Term of this Agreement appropriate professional and comprehensive general liability insurance covering Collection Partner and its Personnel for the provision of Collection Services and Courier Services in such amounts as are usual and customary for entities furnishing similar services under similar circumstances.

6. LIMITATION OF LIABILITY.

- 6.1. EXCEPT FOR UNIVERSITY'S OBLIGATIONS UNDER SECTION 1 OF THIS AGREEMENT, COLLECTION PARTNER SHALL BE SOLELY RESPONSIBLE FOR ANY AND ALL LOSSES, CLAIMS, DAMAGES, COSTS, AND EXPENSES OF ANY KIND OR NATURE ARISING OUT OF OR RELATING IN ANY WAY TO COLLECTION PARTNER'S PERFORMANCE OF THE COLLECTION SERVICES AND COURIER SERVICES, AND UNIVERSITY SHALL NOT HAVE ANY LIABILITY WITH RESPECT TO ANY OF THE FOREGOING.
- 6.2. EXCEPT FOR DAMAGES ARISING OUT OF UNIVERSITY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE TO THE OTHER PARTY FOR ANY PUNITIVE, CONSEQUENTIAL, INCIDENTAL, SPECIAL, REMOTE, EXEMPLARY, COLLATERAL, SPECULATIVE, OR INDIRECT DAMAGES OF ANY KIND (INCLUDING ECONOMIC DAMAGES, DAMAGES ARISING OUT OF INJURY TO PERSONS OR PROPERTY, LOST PROFITS, LOST REVENUE, LOSS OF BUSINESS, OR LOSS OF OPPORTUNITY) ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR THE BREACH OR ALLEGED BREACH HEREOF, REGARDLESS OF FAULT, REGARDLESS OF A PARTY HAVING BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF LEGAL THEORY OR BASIS.

- 6.3. THE TOTAL AGGREGATE LIABILITY OF UNIVERSITY FOR ANY DAMAGES OR OTHER AMOUNTS ARISING OUT OF, UNDER OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, OR THE BREACH OR ALLEGED BREACH HEREOF, SHALL NOT EXCEED FEES PAID IN CONNECTION WITH THE COLLECTION SERVICES AND COURIER SERVICES UNDER WHICH SUCH LIABILITY AROSE.
- 6.4. EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, UNIVERSITY DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. ALL IMPLIED WARRANTIES AS TO SATISFACTORY QUALITY, PERFORMANCE, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND NON-INFRINGEMENT ARE HEREBY EXPRESSLY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- 6.5. THE PARTIES ACKNOWLEDGE THAT THE FEES PAYABLE HEREUNDER ARE BASED IN PART ON THE LIMITATIONS CONTAINED IN THIS SECTION, AND THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

7. INDEMNIFICATION.

- 7.1. Indemnification Obligations. To the extent permitted by law and without waiving sovereign immunity, each Party will indemnify, defend and hold the other (including such Party's officers, directors, employees, volunteers, and agents) harmless from and against any and all losses, claims, suits, damages, and liabilities from third parties based upon, arising out of or attributable to the negligent acts and or omissions of such indemnifying Party, its directors, officers, employees, volunteers and or agents and pertaining to the Collection Services and Courier Services provided hereunder.
- 7.2. Procedures. If any claim covered by the foregoing indemnity shall be asserted against a Party, such Party shall notify the indemnifying Party promptly and tender its defense to the indemnifying Party, in which case the indemnifying Party will provide qualified attorneys, consultants, and other appropriate professionals to represent the indemnified Party's interests at the indemnifying Party's sole expense. Notwithstanding anything herein to the contrary, should an indemnified Party choose to undertake its own defense, choosing the attorneys, consultants, and other appropriate professionals to represent its interests, the indemnified Party will be solely responsible for and pay the reasonable fees and expenses of such attorneys, consultants, and other professionals. An indemnifying Party shall not settle any action without the indemnified Party's prior written consent.
- 7.3. Survival. The provisions of this Section 7 shall survive any expiration or termination of this Agreement.

8. MISCELLANEOUS.

- 8.1.1. Confidentiality. All confidential and proprietary information provided by University to Collection Partner under this Agreement, including but not limited to: technical information and procedures related to Collection Services, Specimen Collection Policies and Procedures, testing, business and financial methods and practices, pricing and marketing techniques, file or database materials, computer programs, including but not limited to the Results Platform and University Portal, and lists of Customers and their End Users, are University's Confidential Information. All information provided to Collection Partner by University is presumed to be University's Confidential

Information, even if not marked as such. University's Confidential Information shall remain the property of University.

- 8.1.2. When used in this Agreement, the term "Confidential Information" means confidential and proprietary information disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") in connection with performance of the Services hereunder that (a) prior to disclosure, is marked with a legend indicating its confidential status or (b) is disclosed orally or visually, if the Disclosing Party identifies such information as confidential at the time of disclosure. The term "Confidential Information" does not include information to the extent that it (a) is known to the Receiving Party when disclosed by the Disclosing Party and the Receiving Party does not then have a duty to maintain its confidentiality, (b) is or becomes publicly known through no act or fault of the Receiving Party, (c) is rightfully obtained by the Receiving Party from a third party who is not subject to a confidentiality obligation to the Disclosing Party, (d) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information, or (e) is required to be disclosed by law or court order, provided that the Receiving Party promptly notifies the Disclosing Party of such a lawful disclosure order to allow Disclosing Party an opportunity to intervene or challenge.
- 8.1.3. The Receiving Party acknowledges that, as between the Parties, the Disclosing Party is and will remain the sole owner of the Disclosing Party's Confidential Information. For a period of five (5) years after the termination or expiration of this Agreement, the Receiving Party will take reasonable precautions to protect the confidentiality of such Confidential Information, and will not disclose or use any such Confidential Information except as necessary to perform its obligations under this Agreement. If the Receiving Party is required by law or court order to disclose any of the Disclosing Party's Confidential Information, the Receiving Party may disclose such Confidential Information as so required, provided that the Receiving Party gives the Disclosing Party reasonable advance notice of the disclosure (if possible in the circumstances) and reasonably cooperates with the Disclosing Party, at the Disclosing Party's request and expense, to obtain a protective order or otherwise limit the disclosure.
- 8.1.4. Collection Partner shall not use or permit others to use University's Confidential Information, except as expressly contemplated under the terms of this Agreement. Collection Partner acknowledges that the unauthorized use, commercialization, or disclosure of University's Confidential Information would cause irreparable harm to University. Therefore, University may seek equitable relief (including injunctive relief) against Collection Partner and its agents to prevent the breach or threatened breach of this Section, in addition to all remedies available at law. The provisions of this Section shall survive any expiration or termination of this Agreement. On termination of this Agreement, Collection Partner shall promptly return all Confidential Information provided to it, together with all copies thereof, or destroy such Confidential Information and certify in writing that such Confidential Information has been destroyed; provided, however, that Collection Partner may retain copies of University's Confidential Information as required by applicable law.
- 8.2. Confidentiality of Specimens/End User and Label Information. The Parties agree that the Specimens collected at the Site and End User and Label information are included among the Confidential Information and are regarded as sensitive health information. For that reason, the Parties agree to safeguard the Specimen, End User and Label information by following best practices for the physical and electronic protection of said information. Collection Partner

acknowledges that Collection Partner performs its Collection Services and Courier Services at the request and direction of University and that University is responsible for reporting the results of the COVID-19 tests performed on End User-supplied Specimens in accordance with other applicable agreements and to the Illinois Department of Public Health and/or any other State or federal agency to which such reporting is required by law or regulation. Collection Partner shall be responsible for inputting all End User and Label information into the Results Platform and transporting the Specimens from the Site to the Labs, but shall not otherwise use or disclose such Specimen or End User or Label information in any other manner except as required by law. Collection Partner shall comply in all material respects with all applicable Federal and State laws, regulations, rules and orders applicable to privacy, security of all information arising out of or related to the Collection Services and Courier Services.

- 8.3. Independent Relationship. It is understood that Collection Partner and University are independent contractors engaging in the operation of their own respective businesses. Neither Party is, or is to be considered as, the agent or employee of the other Party for any purposes whatsoever.
- 8.4. Waiver. No waiver of any breach or failure by either Party to enforce any of the terms or conditions of the Agreement at any time, in any manner limit or waive such Party's right thereafter to enforce and to compel strict compliance with every term and condition hereof.
- 8.5. Severability. The invalidity or unenforceability of any covenant, agreement, term or condition of this Agreement or the application thereof to any person or circumstance shall not affect the validity, enforceability or applicability of any other provision in this Agreement. Furthermore, it is the Parties' intent that any unenforceable provision be construed and limited by any court that considers the matter so as to render it reasonable and enforceable.
- 8.6. Other Obligations. The Parties represent and warrant that proceeding and performing hereunder is not inconsistent with any contractual obligations it has with any third party and shall not be inconsistent with any contractual obligations it may have hereafter with any third party. Further, Collection Partner's performance of Collection Services and Courier Services hereunder shall not violate or infringe on the proprietary rights of University.
- 8.7. Entire Agreement; Amendment. These "Terms and Conditions for COVID-19 Specimen Collection and Courier Services" supersede and replace the "Purchase Order Terms and Conditions" attached to this Purchase Order. The Purchase Order issued with these terms and conditions, together with referenced attachments, constitutes the entire Agreement between Collection Partner and University with respect to the subject matter hereof and supersedes any prior agreements or understandings. It may be modified only in issuance and acceptance of a change order to the original purchase order between the Parties.

- 8.8. Notices. All notices hereunder must be sent in writing via certified U.S. Mail services as follows:

If to University: SHIELD Illinois 349 Henry Administration Building 506 South Wright St. Urbana, Illinois 61801	If to Collection Partner: To the address listed on the face of this Purchase Order
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- 8.9. Warranty. Each Party represents, warrants, and covenants that its ability to provide health care services in any state or other jurisdiction has not been revoked, limited, suspended or otherwise restricted in any material manner. In the event that during the term of the Agreement, either Party is charged with a felony or such Party's ability to provide health care services in any state, commonwealth or other jurisdiction is revoked or becomes limited, suspended or otherwise restricted in any material manner, such Party shall immediately advise the other Party and such event shall be grounds for immediate termination with cause under the Agreement. Collection Partner represents, warrants and covenants that it, its parent entities and/or its subsidiaries, and, to its knowledge, any of its employees, agents or subcontractors involved in the provision of Collection Services and Courier Services under this Agreement are not currently charged with and have never been convicted of a felony as set forth in 42 U.S.C. § 1320a-7, nor have they ever been suspended from participation in, or subjected to, any type of criminal or civil sanction, fine, civil money penalty, debarment or other penalty by any private or public health insurance program, including Medicare, Medicaid, Tricare or any other federal or state health insurance program.
- 8.10. Headings. The paragraph headings in this Agreement are for convenience only and shall not affect the interpretation of the Agreement.
- 8.11. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois, without regard to conflicts of law principles.
- 8.12. Force Majeure. The Parties shall be excused for failures and delays in the performance of their respective obligations under this Agreement due to any cause beyond the control and without the fault of such Party including without limitation, any government order, act of God, war, terrorism, riot or insurrection, law or regulation, strike, flood, fire, explosion, pandemic, epidemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions, or inability due to any of the aforementioned causes to obtain necessary labor, materials or facilities. This provision shall not, however release such Party from using its commercially reasonable efforts to avoid or remove such cause and such Party shall continue performance hereunder with the utmost dispatch whenever such causes are removed. Upon claiming any such excuse or delay for non-performance, such Party shall give prompt written notice thereof to the other Party, provided that failure to give prompt written notice thereof to the other Party provided that failure to give such notice shall not in any way limit the operation of this provision.
- 8.13. Assignment. Neither Party may assign any rights or delegate any duties under this Agreement without the express prior written consent of the other, unless otherwise permitted under this Agreement. Any attempted assignment or delegation in violation of this provision shall be void and have no binding effect.
- 8.14. Binding Effect. This Agreement shall be binding upon and inure to the benefit of all the Parties hereto and their successors and assigns.

EXHIBIT A

NOTIONAL SAMPLE ORDER

SHIELD ILLINOIS PHYSICIAN STANDING ORDER FOR COVID-19 TESTING

I. TESTING SERVICES TO BE PROVIDED

This standing order is issued for the *SHIELD Illinois* program of the University of Illinois at Urbana-Champaign ("University"). SHIELD ILLINOIS is a statewide public health response to the COVID-19 pandemic. The University has developed an rtPCR COVID-19 saliva test methodology (the "Test") [that has received emergency use authorization from the U.S. Food and Drug Administration.] The University has formed a network of saliva specimen collection partners (each a "Collection Partner") who have agreed to operate specimen collection sites. The University also has formed a network of CLIA-certified laboratories (each a "Laboratory") capable of analyzing the specimens using the Test. The University has contracted with institutional customers around the state who wish to use the Test to provide COVID-19 screening or diagnosis for specified groups of individuals.

II. AUTHORIZED PROVIDERS

This standing order authorizes any Collection Partner to supervise individuals in the self-collection of their saliva and to submit the specimens to a Laboratory for analysis using the Test, all in accordance with the SHIELD Illinois procedures. All individuals 18 years of age or older and individuals under age 18 with parental consent and who otherwise qualify for testing may submit for testing pursuant to this order.

III. TRAINING OF PROVIDER PERSONNEL

[To be determined based on requirements of Emergency Use Authorization]

IV. TERM

This order shall take effect on the date of issuance and shall remain in effect for one year, with six-month automatic renewals, unless revoked by the ordering physician for medical, regulatory, or public health reasons, or unless the Governor of Illinois declares the statewide public health emergency ended.

[PHYSICIAN NAME] Date: _____

Illinois License Number:

**COVID-19 TESTING SERVICES AGREEMENT WITH
VITALITY URGENT AND PRIMARY CARE**

Recommendation

The administration recommends that the Board of Trustees approves the COVID-19 testing agreement with Vitality Urgent and Primary Care to comply with Illinois Executive Order 2021-20 (COVID-19 Executive Order No. 87).



Dr. David Sam, President

Background

The purpose of this agreement is for the College to provide onsite COVID-19 testing for students and employees. Testing will be free of charge to all who request a COVID-19 test. However, Elgin Community College will be charged per test. Therefore, only employees and students are allowed to utilize the Vitality COVID-19 testing service. Vitality specializes in safe and efficient on-site COVID testing for companies in and around Chicago to keep employees safe and minimize disruptions to work schedules. This testing can be done on a recurring, one-time, or on-demand basis depending on the College's needs. Vitality provides the results directly to Elgin Community College or/and employees via email, text, or phone call. Elgin Community College is responsible for the providing a location for testing and communication to constituents.

Funding Source: Higher Education Emergency Relief Funds (HEERF)

Staff Contact: Dr. Kimberly Wagner, Vice President, Business and Finance,
847-214-7728

NOTICE: COVID-19 is an emerging infectious disease caused by the most recently discovered coronavirus. Limitations of COVID-19 Testing. Due to the nature of the COVID-19 virus, we cannot guarantee that the diagnostic test results are accurate reflections of an individual's COVID status. As with any test, it is possible to produce both false-positive and false-negative COVID-19 results. Results should be interpreted in light of the persons recent activities, potential exposure, and presence of the clinical symptoms associated with COVID-19.

COVID-19 Testing Services Agreement

This COVID-19 Testing Services Agreement ("Agreement") is between **VITALITY URGENT AND PRIMARY CARE** ("Consultant"), an Illinois professional corporation, and **ELGIN COMMUNITY COLLEGE** ("Client"), and is executed as of the date of the last signature.

- A. COVID-19 is a new, emerging infectious disease that was discovered in 2019 in Wuhan, China. COVID-19 has appeared in the United States and has become a source of constant concern for organizations. Consultant may provide COVID-19 testing services to Client's.
- B. Consultant is an Illinois professional corporation that has the requisite resources and expertise to provide on-site COVID-19 testing services.
- C. Client is a(n) **ELGIN COMMUNITY COLLEGE**, that desires such COVID-19 testing services at its business.
- D. Client desires to engage Consultant to provide COVID-19 testing services, and Consultant desires to provide such services to Client under the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. **ENGAGEMENT OF CONSULTANT AND TESTING SERVICES**
 - 1.1 **Engagement.** As provided in this Agreement, Consultant may provide the Client with Testing Services.
 - 1.2 **Agreement to Pay Fees.** As compensation for Testing Services, Client shall pay the Fee, as detailed in Schedule I.

1.3 **Testing Services.** Testing Services include:

- (i) travel to Client's business or testing location for the Testing Event;
- (ii) administer either the SARS-CoV-2 RNA, Qualitative Real-Time RT-PCR to Client's employees/students/consultants at the Testing Events as agreed.
- (iii) obtain and disseminate Testing Event results typically within 24 hours post completion of testing event and with additional day if this timeline includes a Saturday or Sunday, unless otherwise noted; and
- (iv) engage in serial testing of Client's employees/students/consultants if the exposure occurred within four days of the testing event, or if tested individuals develop symptoms.

1.4 **Other Services.** Unless otherwise prohibited by this Agreement or law, by mutual written agreement of the parties, Consultant may provide other services in addition to Testing Services, as mutually agreed to by both parties.

1.5 **Provisions of Services.** Consultant will provide Testing Services consistent with Consultant's reasonable medical and business judgment. In no event shall Consultant provide any services that Consultant is not permitted to provide under applicable law or to which Consultant does not consent. Unless otherwise specified in this Agreement, Consultant has the right to control and direct the means, manner, and method by which it performs Testing Services.

2. **TERM AND CANCELATION**

2.1 **Term.** This Agreement shall begin on the Effective Date and continue until the completion of Consultation Services or until Cancellation, pursuant to Section 2.2.

2.2 **Cancellation.** Either party may cancel scheduled Testing Services by providing at least 48 hours' written notice to the other party.

3. **DISPUTES**

3.1 **Formal Dispute Resolution (Binding Arbitration).** Client and Consultant mutually agree that, to the fullest extent allowed by law, they will submit all disputes arising under this Agreement or arising out of or related to the Testing Services to the Client final and binding arbitration in Chicago, Illinois, before an arbitrator associated with the Judicial Arbitration and Mediation Services (JAMS). The arbitrator selected shall have the authority to grant Consultant or Client or both all remedies otherwise available by law. The parties understand they are waiving their right to a jury trial in favor of arbitration.

4. **INTELLECTUAL PROPERTY**

4.1 **License.** Consultant may, as part of Testing Services, provide Educational Materials. Consultant will grant Client a limited, nonexclusive, nontransferable, nonsublicensable, nonassignable, revocable license for the use of Educational Materials. Client is not

granted any right, title, or interest in anything other than as expressly provided in this Agreement. All rights not granted by this license are expressly reserved.

- 4.2 **Restrictions.** Except as expressly set forth in this Agreement, Client shall not do any of the following: (i) modify, reformat, or translate Educational Materials, (ii) license, sell, rent, lease, transfer, assign, distribute, offer, or otherwise commercially exploit Educational Material, or any portion thereof; or (iii) use Educational Materials in any manner that allows any Person to access Educational Materials other than as expressly provided for in this Agreement.
- 4.3 **Intellectual Property.** Client acknowledges and agrees that Consultant (i) is the exclusive owner (or has the rights of an owner) of all worldwide right to, title to, and interest in Educational Materials, regardless of the format in which it is expressed; and (ii) shall be the exclusive owner of all worldwide right to, title to, and interest in any and all modifications, customization, variations, or adaptations of Educational Materials based on or substantially similar to Educational Materials.

5. INDEMNIFICATION, INSURANCE, AND LIMITATION OF LIABILITY

- 5.1 **Indemnification.** (a) Client hereby agrees to defend, indemnify, and hold Consultant Indemnified Parties harmless from and against any and all liabilities, causes of action, damages, losses, demands, claims, penalties, judgments, and costs and expenses (including, without limitation, reasonable attorney's fees and related costs) of any kind that may be sustained or suffered by Consultant Indemnified Parties in any way relating to, arising out of, or resulting from (i) Client's negligence or willful misconduct, or the negligence or willful misconduct of Client Indemnifying Party; (ii) any breach by Client Indemnifying Party of any of its representations, warranties, covenants, obligations, or duties under this Agreement; and (iii) Client Indemnifying Party's failure to comply with any law, statute, ordinance, rule, or regulation.
- 5.2 (b) Consultant hereby agrees to defend, indemnify, and hold Client Indemnified Parties harmless from and against any and all liabilities, causes of action, damages, losses, demands, claims, penalties, judgments, and costs and expense (including, without limitation, reasonable attorney's fees and related costs) of any kind that may be sustained or suffered by Client Indemnified Parties in any way relating to , arising out of, or resulting from (i) Consultant's negligence or willful misconduct, or the negligence or willful misconduct of Consultant Indemnifying Party, (ii) any breach by Consultant Indemnifying Party of any of its representations, warranted, covenants, obligations, or duties under this Agreement; and (iii) Consultant Indemnifying Party's failure to comply with any law, statute, ordinance, rule, or regulation.
- 5.3
- 5.4

Organization and Good Standing. Client represents and warrants that Client's performance under this Agreement does not violate Client's entity governance documents or other Client agreements or result in a conflict, breach, or default under any contract, agreement, instrument, or other document to which Client is subject. Client represents and warrants that Client is not a healthcare entity, healthcare provider, or otherwise engaged in patient-facing healthcare work.

and warranties arising by statute or otherwise in law or from a course of dealing or use of trade. The only function of Consultant is to provide Testing Services. Consultant shall not have any liability to Client when complying with Consultant's obligations under this Agreement or be liable for any of Client's existing obligations, liabilities, or debts. Consultant shall not be liable for damages arising from willful misconduct or negligence of any employee, agent, or independent contractor of Client. Consultant does not warrant that Testing Services will detect or not deduct the existence of COVID-19 or any other infectious disease. However, Consultant shall make commercially practicable efforts to provide the Testing Services to help Client test its employees at its place of business. The parties acknowledge that COVID-19 is a new illness with unknown transmission mechanisms, symptoms, and it has no known vaccine.

- 5.5 **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL CONSULTANT OR ANY OF ITS SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS BE LIABLE TO CLIENT OR ANY THIRD PARTY WHOSE CLAIM IS RELATED TO THIS AGREEMENT, UNDER ANY THEORY FOR (A) LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES OR EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR SIMILAR DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER THE APPLICABLE ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (B) FOR ANY CLAIMS, DAMAGES, OR COSTS OF ANY NATURE IN EXCESS OF \$2,500.

6. TESTING EVENT SCOPE, LOCATION, AND DISCLOSURE

- 6.1 **Provider-Patient Relationship.** Client understands that engaging Consultant for Testing Services does not create a provider-patient relationship with tested individuals. The relationship exists only in so far as to order, administer, and evaluate a COVID-19 test. Consultant will also include this information in the Consent Forms that all Client employees/students/consultants obtaining Testing Services during the Testing Event must complete. Client's employees/students/consultants will also be directed to follow up with their primary healthcare provider if the Testing Services produce a positive result for COVID-19. Patient having positive results also will have an opportunity to consult with Vitality provider for further care plan.
- 6.2 **Location for Testing Event.** Client is responsible for ensuring a safe location is available and reserved for the Testing Event. The location should be large enough to accommodate the testing team and Client's employees. If upon Consultant's arrival, Consultant determines that the testing location is insufficient for the Testing Event or that the

location presents dangers to the Consultant, Client, or Client's employees, Consultant reserves the right to not proceed with the Testing Event.

- 6.3 **Disclosure.** Consultant will require Client's employees/students/consultants to consent to allow the results of the Consultation Services to be disclosed with Client and appropriate state and federal agencies. The disclosure shall be made only to facilitate the functions related to communicable disease prevention and containment, as well as activities related to sustaining a safe work environment.
- 6.4 **Limitations of COVID-19 Testing.** Due to the nature of the COVID-19 virus, Consultant cannot guarantee that the diagnostic test results are accurate reflections of an individual's COVID status. As with any diagnostic test, it is possible to produce both false-positive and false-negative COVID-19 results. Results should be interpreted in light of the employee's recent activities, potential exposure, and presence of the clinical symptoms associated with COVID-19.

7. DEFINITIONS

For the purposes of this Agreement:

- 7.1 **"Agreement"** means this COVID-19 Testing Services Agreement.
- 7.2 **"Client Indemnifying/Indemnified Party"** means and includes Client and its members, managers, shareholders, directors, employees, agents, customers, successors, assigns, affiliates, and direct and indirect subsidiaries, if any.
- 7.3 **"Consultant Indemnifying/Indemnified Parties"** means and includes Consultant and its shareholders, directors, officers, employees, agents, customers, successors, assigns, affiliates, and direct and indirect subsidiaries, if any.
- 7.4 **"Educational Materials"** means paper or digital copies of any educational material disseminated related to the Testing Services that is owned solely by Consultant.
- 7.5 **"Effective Date"** means the date upon which this Agreement is signed by the last party to sign it, as indicated by the date associated with the party's signature.
- 7.6 **"Fee"** means the combination of the Testing Services Fee and the Travel Fee, as provided in Schedule I.
- 7.7 **"Person"** means any individual, sole proprietorship, partnership, joint venture, limited liability company, trust, unincorporated organization, corporation, institution, a public benefit corporation, entity, or government instrumentality, division, agency, body, or department, or any other legal or commercial entity, in its own or representative capacity.
- 7.8 **"Testing Event"** means the day or days that Consultant and Client have agreed to have Consultant travel to Client's business and perform the Testing Services.
- 7.9 **"Travel Fee"** means compensation paid by Client for Consultant's time and expenses associated with going to Client's location, as provided in Schedule I.

- 7.10 **“Testing Services”** means administering the SARS-CoV-2 RNA, Qualitative Real-Time RT-PCR test to Client’s employees/students/consultants, as provided in Section 1.3.
- 7.11 **“Testing Services Fee”** means compensation paid by Client to Consultant for Testing Services under this Agreement, as provided in Schedule I.
8. **MISCELLANEOUS**
- 8.1 **Survival.** The entirety of Sections 4, 5, and 6, as well as Sections 8.3, and 8.11, shall survive termination of this Agreement.
- 8.2 **Authority to Act.** The parties state that each has the authority to enter into this Agreement.
- 8.3 **Limited Liability.** In the event of any actual or alleged failure, breach, or default of this Agreement by Consultant, (i) the sole and exclusive remedy shall be against Consultant in its corporate capacity; (ii) no shareholders, director, officer, or affiliate of Consultant shall be sued or named as a party in any suit or action; (iii) the obligations under this Agreement do not constitute personal obligations of any shareholders, director, officer, employee, or affiliate; and (iv) Client shall not seek personal assets of any shareholders, director, officer, employee, or affiliate for satisfaction of any liability in respect to this Agreement.
- 8.4 **Assignment.** This Agreement is personal to Client. Client may not assign any right or delegate any obligation under this Agreement to any other person, other than by will or intestate succession. Consultant may assign its rights under this Agreement.
- 8.5 **Notices and Address.** For a notice under this Agreement to be valid, it must be in writing and delivered to the address or email address listed in Section 8.6. If by mail, a valid notice under this Agreement will be effective when received by the party to whom it is addressed, and it shall be made by personal delivery, certified or registered U.S. Mail with return receipt required, or overnight delivery service with proof of delivery. If by email, a valid notice under this Agreement will be effective when the party to whom it is addressed receives it, and it shall be sent with a delivery receipt and read receipt requested to the email listed below.
- 8.6 **Receipt of Notice.** Notice will be deemed to have been received if the party to whom it is addressed rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address or email address for which no notice was given, then upon that rejection, refusal, or inability to deliver. For a notice to a party under this Agreement to be valid, it must be addressed using the information in this Section 8.6 for that party. The addresses to which notices, or other communications shall be mailed may be changed from time to time by giving written notice to the other parties as provided above.

If to Consultant: Rodion Levin, FNP
Vitality Urgent and Primary Care
1807 Hicks Rd. Suite A
Rolling Meadows IL, 60008
rod@vitalityurgentcare.com

If to Client: **ELGIN COMMUNITY COLLEGE**
1700 Spartan Dr
Elgin, IL, 60123

- 8.7 **Modification and Waiver.** No amendment of this Agreement shall be effective unless it is in writing and signed by the parties. No waiver of satisfaction of a condition or failure to comply with an obligation under this Agreement shall be effective unless it is in writing and signed by the party granting the waiver, and no such waiver shall constitute a waiver of satisfaction of any other condition or failure to comply with any other obligation. To be valid, any document signed by either party in accordance with this Section must be signed by an authorized member or manager of that party.
- 8.8 **Severability.** The parties intend that (i) if any provision of this Agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded; (ii) if an unenforceable provision is modified or disregarded in accordance with this Section, then the rest of this Agreement will remain in effect as written; and (iii) any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.
- 8.9 **Counterparts.** If the parties sign this Agreement in several counterparts, each will be deemed an original, but all counterparts together will constitute one instrument.
- 8.10 **Headings.** The headings of this Agreement are inserted for convenience only and are not to be considered in the construction of the provisions of this Agreement.
- 8.11 **Governing Law.** The laws of the State of Illinois, without giving effect to its principles of conflicts of law, govern all adversarial proceedings arising out of this Agreement.
- 8.12 **Opportunity to Consult with Counsel.** Client acknowledges that Consultant has encouraged Client to consult with an attorney of Client's choice and expense prior to signing this Agreement. The parties have carefully reviewed and negotiated the terms of this Agreement and, accordingly, agree that any drafting errors, ambiguities, or inconsistencies shall not be interpreted against Consultant.
- 8.13 **Scope of Agreement and Entire Agreement.** This Agreement constitutes the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes all other agreements, whether written or oral, between the parties. This Agreement supersedes any prior oral or written agreements concerning the substance of

this Agreement.

- 8.14 **No Third-Party Beneficiaries.** Except as expressly provided in this Agreement, no Person that is not a party to this Agreement will be a third-party beneficiary of any rights or obligations or be entitled to enforce any rights or obligations.
- 8.15 **Confidentiality.** Unless otherwise provided in this Agreement or necessary for performance under this Agreement, the parties shall keep the terms and conditions of this Agreement confidential.
- 8.16 **Relationship of the Parties.** The parties acknowledge and agree that (i) the parties are independent contractors and no employment, partnership, joint venture, or landlord and tenant relationship exists; (ii) except as otherwise provided in this Agreement, neither party is the agent of the other; (iii) by performing their respective obligations under this Agreement, the parties shall not be liable for the other party's existing obligations or liabilities; (iv) to the greatest extent permitted by law, Consultant shall only have an obligation to exercise reasonable care in performing under this agreement; (v) neither party shall have any liability for damages from the willful misconduct or negligence of any employee, agent, or independent contractor of the other party. Client may and shall not bind Consultant to any obligation.
- 8.17 **Effectiveness Date.** This Agreement will become effective when all parties have signed it. The date of this Agreement will be the date upon which this Agreement is signed by the last party to sign it, as indicated by the date associated with the party's signature. Each party is signing this Agreement on the date stated opposite that party's signature.
- 8.18 **Consent to Do Business Electronically.** This Agreement may be electronically signed. Electronic signatures on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

IN WITNESS WHEREOF, after having fully read and approving of the terms listed above, each party is signing this agreement on the date stated opposite that party's signature. The undersigned thereby agree to be bound by this agreement.

[Signatures to follow. The remainder of page intentionally blank.]

**CONSULTANT:
VITALITY URGENT AND PRIMARY CARE**

Date

By: Rodion Levin
Its: President

**CLIENT:
ELGIN COMMUNITY COLLEGE**

Date

By: _____
Its: _____

Schedule I

The Fee shall be as provided on this Schedule I.

1. **Fee.** The Fee is a combination of the Testing Services and Telemedicine Consultation for positive cases.
2. **Testing Services Fee.** The cost of the Qualitative Real-Time RT-PCR Testing Services varies based on quantity and outlined below
- 3.

Assay	Pricing per Test	Estimated Samples Per Week	Hourly Cost
SARS-CoV-2, Qualitative Real-Time RT-PCR	\$120	<300/week	\$50
SARS-CoV-2, Qualitative Real-Time RT-PCR	\$110	>300/week	\$0

4. **Adjustment of Final Bill.** Consultant understands that the number of planned tests may vary from the initial estimate. Consultant will adjust the bill accordingly after weekly Testing Event.
5. **Payment.** At the end of weekly Testing Event, Client will be invoiced and shall pay the entire Fee, Net 14.
6. **Schedule:** Proposed schedule 40 hours weekly and to be adjusted as needed per mutual agreement of client and consultant

Mon	Tue	Wed	Thu	Fri	Sat
7am-3pm	10am-6pm	7am-3pm	10am-6pm	7am-3pm	TBA