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SERVICES AGREEMENT

(Biodesix, Inc.)

This Services Agreement (this "**Agreement**") is effective as of the 1st day of January, 2021 (the "**Effective Date**") and is entered into by and between the Board of Education of the City of Chicago, a body politic and corporate, commonly known as Chicago Public Schools, with offices located at 42 West Madison Street, Chicago, IL 60602 (the "**Board**" or "**CPS**") and Biodesix, Inc. with principal place of business located at 2970 Wilderness Place, Suite 100, Boulder, CO 80301 ("**Vendor**"). The Board and Vendor shall be referred to collectively herein as the "**Parties**."

RECITALS

- A. The Board desires that Vendor provide certain COVID-19 surveillance testing services; and
- B. This item was presented to the Single/Sole Source Committee on December 18, 2020 and approved by the Chief Procurement Officer. Upon approval as a Single Source, the item was published on the Procurement website on December 23, 2020 found here: cps.edu/procurement. The item will remain on the Procurement website until the January 27, 2021 Board Meeting in compliance with the Board's "Single/Sole Committee Charter"; and
- C. Vendor operates clinical laboratories that are duly licensed and are certified under all applicable federal and state statutes and regulations and the Medicare and Medicaid programs, and at which it provides diagnostic testing. For COVID-19 Testing, Biodesix offers two COVID Tests (collectively "**COVID Testing**"). The Bio-Rad Droplet Digital PCR ("**ddPCR**") testing tests for the presence or absence of the virus, and the Bio-Rad SARS CoV-2 total antibody ("**Antibody**") test which measures the presence of antibody to the SARS CoV-2 virus. All tests have been authorized under Emergency Use Authorizations by the FDA;
- D. Vendor has demonstrated expertise in providing such services as COVID Testing, has represented that it has the requisite knowledge, skill, experience and other resources necessary to perform such services and is desirous of providing such services to the Board; and
- E. The parties now wish to execute this Agreement that defines the nature of their relationship, establishes pricing, and describes the manner in which services will be furnished by Vendor.

NOW, THEREFORE, in consideration of the foregoing, which are incorporated into and made a part of this Agreement by this reference, and the mutual covenants contained herein, the parties agree:

1. **Term**. This Agreement will commence on January 1, 2021 and continue through June 30, 2021 (the "**Term**"), unless terminated sooner as provided in this Agreement or if the Agreement is required to terminate by law on the date the emergency defined in Section 1135(g)(1)(B) of the Social Security Act (the "**PHE**") is no longer in effect.

2. **Services**

2.1. **Scope of Services:** Vendor agrees to provide the Services as described in this Agreement, including the Responsibilities of Vendor defined in the Scope of Services that is attached and incorporated into this Agreement as Exhibit A and any and all services, deliverables, duties, responsibilities, and work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement. The Board retains final authority with respect to all decisions related to the delivery of the Services, both Parties shall share decision-making in regards to allocating responsibilities of the Parties, and Vendor shall have sole authority regarding the actual performance of any COVID Testing at its laboratories and the direction and control of Vendor's employees and contractors. The

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Board may, from time to time, request changes in the Scope of Services. Any such changes to the Agreement shall require documentation by a written amendment to this Agreement signed by the authorized representatives of both parties and the Board's General Counsel.

2.2. Additional Restrictions and Requirements

- A. Vendor shall only provide in-person Services at any time during the Term or any Renewal Term, including during full or partial/hybrid closure of CPS schools due to COVID-19:
1. As set forth the Scope of Services.
 2. In compliance with all policies, guidelines, requirements and protocol regarding health, safety, and COVID-19 of the Chicago Public Health Department ("CDPH").
 3. In compliance with all CPS policies, guidelines, requirements and protocol regarding health, safety, and COVID-19, as may be amended, including but not limited to all standards and expectations for on-site programming at schools during remote and hybrid learning.

3. Compensation

- 3.1. **Maximum Compensation Amount:** Vendor shall be paid in accordance with the fees and costs set forth in the Budget, attached and incorporated into this Agreement as Exhibit B. The maximum compensation payable to Vendor during the Term of this Agreement shall not exceed Three Hundred Eighteen Thousand Five Hundred Dollars (\$318, 500.00) ("**Maximum Compensation Amount**"), as may be amended. It is understood and agreed that the Maximum Compensation Amount is a 'not-to-exceed amount' and is not a guaranteed payment. Compensation shall be based on actual Services performed during the Term of this Agreement, and the Board shall not be obligated to pay for any Services or other deliverables not in compliance with this Agreement. No expenses shall be reimbursed under this Agreement. In the event the Agreement is terminated early, the Board shall only be obligated to pay the fees incurred up to the effective date of termination and Vendor shall promptly refund to the Board any payments received from Services and deliverables not provided.
- 3.2. **Budget:** Vendor will invoice the Board for all COVID Testing as well as any additional Services to be conducted under this Agreement as described in the Budget, attached as Exhibit B. Throughout the Term, Vendor shall have the sole right, at its election, to bill third party payers and collect charges for COVID Testing, unless billing requirements mandated by Federal or State laws or regulations supersede or nullify all or part of this provision. If any law or regulation is enacted that contradicts or supersedes this provision, Vendor and the Board will amend this section to comply with such laws or regulations in full. Nothing in this Section shall be understood to permit Vendor to charge the Board any amount that exceeds the Maximum Compensation Amount or for Services that are not described in the Budget.
- 3.3. **Billing and Payment Procedures:** All invoices must be submitted electronically via email in PDF format to cpsinvoice@cps.edu. Each email may only contain one invoice and must include your Vendor name and the CPS Purchase Order number. All invoices must include:
- Vendor name and payment address
 - Unique invoice number (determined by Vendor)
 - Valid purchase order number (only one PO number may be referenced on each invoice)
 - Invoice date

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- Itemized description of the services rendered and/or goods delivered
- Date the services were provided and/or goods were delivered to CPS
- Detailed pricing information such as quantities, unit prices, discount, and final net amount due

Invoices shall be submitted in a timely manner. The final invoice shall be submitted no later than ninety (90) days after the expiration or termination of this Agreement. If Vendor has more than one contract with the Board, separate invoices must be submitted for each contract. The Board shall process payments in accordance with the Local Government Prompt Payment Act [50 ILCS 505/1 *et seq.*]. The Board reserves the right to request additional information and supporting documentation necessary for the Board to verify the Services provided under this Agreement.

4. **Personnel:** Vendor must assign and maintain during the term of this Agreement an adequate staff of competent personnel. For the avoidance of doubt, all volunteers of Vendor shall be considered agents of Vendor and subject to the same requirements hereunder as Vendor's paid employees and subcontractors. If the Board determines that any employee, subcontractor or other person providing Services hereunder is not performing in accordance with the performance standards or other requirements of this Agreement, the Board shall have the right to ask Vendor to remove such personnel from the Board's account, and Vendor shall use commercially reasonable efforts to provide replacement(s) in a timely manner. In the event that the Board has reasonable concerns that an individual poses a risk to the safety or welfare of the Board's students or staff, Vendor agrees that such personnel shall be removed from the Board's account immediately and shall have no further contact with the Board's employees, agents, and students. Vendor further agrees to bear any costs associated with the removal of such person.

5. **Standards of Performance:** Vendor shall devote, and shall cause all of its employees, agents and subcontractors, if any, to devote, such of their time, attention, best skill and judgment, knowledge and professional ability as is necessary to perform Services effectively, efficiently, and consistent with the best interests of the Board and to the reasonable satisfaction of the Board's Chief Procurement Officer or his/her designee based on the terms of this Agreement. Vendor shall retain and utilize sufficient staff to assure the most effective and efficient supply of Services and shall utilize, if required by law or the terms of the Scope of Services, professionals licensed to practice in the State of Illinois in the applicable profession. Vendor shall use efficient business administration methods and perform the Services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and in an expeditious and economical manner consistent with the best interests of the Board, so as to assure, among other things, that the Services are performed at a reasonable cost to the Board and that Services supplied by other entities or persons in connection with this Agreement are efficiently and cost-effectively delivered. Vendor acknowledges that, if in the course of providing Services hereunder, it is entrusted with or has access to valuable or confidential information or records of the Board, that with respect to that information, Vendor agrees to hold such information in confidence as per Section 6. Any review, approval, acceptance of Services or deliverables by the Board does not relieve Vendor of its responsibility for the professional skill, care, and technical accuracy of its Services and deliverables or payment for any Services. Vendor shall remain responsible for the professional and technical accuracy of all Services, including any deliverables furnished, whether by Vendor or its subcontractors or others on its behalf.

6. **COMPLIANCE: Confidential Information; Dissemination of Information; Legal Compliance; Data Ownership; Injunctive Relief; Survival:**

6.1. **Confidential Information:** In the performance of the Agreement, each Party may have access to or receive certain information that is not generally known to others ("**Confidential Information**"). Such Confidential Information may include but is not limited to: business and testing information and pricing, Student Data as further defined below, employee data, technical data or specifications, software, ideas, budget figures, operational details, security details, unpublished information, financial information, and business plans. It is understood and agreed that Confidential Information also includes proprietary or confidential information of third parties provided by either Party. Confidential Information will not include information that is: (i) or becomes part of the public

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domain through no fault of the recipient; (ii) made available to recipient by an independent third party having the legal right to make such disclosure; and (iii) information that can be established and documented by the recipient to have been independently developed or obtained without violating the confidentiality obligations of this Agreement and any other agreements with the other Party (which includes the confidentiality agreement between the Parties entered on or about Dec. 22, 2020(the "NDA"))).

6.2. **Student Data:** Student Data means any data, metadata, information, or other materials of any nature recorded in any form whatsoever, that is generated, disclosed, transmitted, created, or provided by the Board, either directly or through its students, employees, agents, and subcontractors, including any Student Data (if applicable) that is listed in Exhibit A attached hereto and incorporated herein (or if amended in at a later date), and all information used, created, or generated through the use of any technology including but not limited to any Software (as defined in the Agreement), by the Board, through its employees, agents, subcontractors, or the parent or legal guardian of any CPS student, that is directly related to a CPS student. For purposes of this Agreement, Student Data shall still be considered Confidential Information; additional requirements regarding Student Data specifically are described below.

6.3. **Use of Confidential Information:** Each Party shall only use the other Party's Confidential Information for the sole purpose of enabling or providing the Services hereunder and shall not disclose the other Party's Confidential Information except to those of its officers, agents, employees, and subcontractors who have a need to access the Confidential Information for the performance of the obligations set forth in this Agreement, or allowed by the NDA. Neither Party shall copy or reproduce in any manner whatsoever the Confidential Information of the other Party without the prior written consent of that Party, except where required for its own internal use in accordance with this Agreement. Each Party shall use at least the same standard of care in the protection of Confidential Information as it uses to protect its own confidential information, but in any event, such Confidential Information shall be protected in at least a commercially reasonable manner. Notwithstanding the foregoing, it is understood and agreed that such protection of Confidential Information may be subject to the special requirements of FERPA, the Student Online Personal Protection Act "SOPPA", and ISSRA, as applicable, as described in the Compliance with Laws Section.

6.4. **De-Identified Data:** De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, persistent unique identifiers, name, ID numbers, date of birth, demographic information, location information, and school ID. Vendor agrees not to attempt to re-identify de-identified Data. For the purposes of this Agreement, De-Identified Data will still be considered Confidential Information and treated as such unless expressly provided otherwise in this Agreement or by a later written amendment to this Agreement signed by authorized representatives of the Parties allowing for additional uses of the De-identified Data.

6.5. **Legal Compliance.** The terms of this Agreement are intended to be in compliance with all applicable federal, state, and local statutes, regulations, and ordinances. Each of the Parties represents and warrants to the other Party that it will comply with all applicable laws, rules and regulations, as they may be amended from time to time, including, but not limited to, (1) the Health Information Technology for Economic and Clinical Health Act of 2009 (the "**HITECH Act**"); (2) the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. §1320d through d-8 ("**HIPAA**"); (3) the requirements of any regulations promulgated under either the HITECH Act or HIPAA, including, without limitation, the federal privacy regulations as contained in 45 CFR Parts 160 and 164 (the "**Federal Privacy Regulations**"), the federal security standards as contained in 45 CFR Parts 160, 162 and 164 (the "**Federal Security Regulations**"), and the federal standards for electronic transactions contained in 45 CFR Parts 160 and 162 (the "**Federal Electronic Transactions Regulations**"); (4) the federal Physician Self-Referral Law (42 U.S.C. § 1395nn), the regulations promulgated thereunder and similar state physician self-referral laws and regulations; (5) the federal Medicare/Medicaid Anti-Kickback Law (42 U.S.C. § 1320a-7b), the regulations promulgated thereunder and similar

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state anti-kickback laws and regulations; (6) the Eliminating Kickbacks in Recovery Act (18 U.S.C. § 220), the regulations promulgated thereunder and similar state laws and regulations; (7) any relevant State privacy laws including, for example, the California Consumer Privacy Act (TITLE 1.81.5. California Consumer Privacy Act of 2018 [198.100 - 1798.199] (Title 1.81.5 added by Stats. 2018, Ch. 55, Sec. 3)) (8) Prevailing Wage Act, 820 ILCS 130/1 et seq.; (9) City of Chicago and Cook County Minimum Wage Ordinances, including applicable Executive Order(s) and Board(s) Resolutions; (10) the Drug-Free Workplace; (11) the Illinois School Student Records Act, (12) the Family Educational Rights and Privacy Act; (13) SOPPA; (14) the Protection of Pupil Rights Amendment, and (15) any others relating to non-discrimination. Further, Vendor and Board is and shall remain in compliance with all applicable Board policies and rules, and in particular Board is and shall remain in compliance with its code of ethics. Board policies and rules are available at <http://www.cps.edu/>. In addition, Vendor shall comply with any state and federal governmental regulations, requirements, and guidelines, policies, and rules in effect now or later, and as amended from time to time related to COVID-19, including without limitation all reporting requirements and recommendations or requirements regarding face coverings and social distancing

Should legal counsel for either Party reasonably conclude that due to a change in applicable federal, state and local laws or regulations (1) any portion of this Agreement is or may be in violation of the requirements set forth in Section 6.5 of this Agreement, or (2) it has become impossible for Vendor to perform or operate as required by the Agreement in compliance with all applicable laws and regulations (collectively “**Unforeseen Legal Restrictions**”), the parties, including the Board’s Chief Talent Officer and Vendor’s C.E.O (or C.E.O. designee) agree to engage in good faith discussions and utilize best efforts to develop and implement a plan in order for Vendor to establish compliance with federal, state or local authorities and resume Services.

If, after exhausting efforts described above over a sixty (60) day period, the Parties are unable to resolve and reasonably address the Unforeseen Legal Restrictions, and collectively determine that Vendor is unable to bring the Services in compliance with federal, state and local laws and regulations, then, the Parties may agree in writing to terminate the Agreement within a time period mutually agreed by both Parties. The Parties acknowledge and agree that this provision is intended to address Unforeseen Legal Restrictions that Parties mutually agree cannot be overcome. In the event the Parties mutually agree to terminate the Agreement pursuant to this Section 6.5, the Parties agree to work together to develop and implement a wind down process for Services under the Agreement.

6.6. Transmitting and Storing Confidential Information: Each Party shall protect against the unauthorized access, use or disclosure of the other Party’s Confidential Information by employing security measures that are no less protective as those used to protect its own confidential information. When handling Confidential Information, which may include but is not limited to employee data, and where applicable Student Data, the Parties shall:

- A. When mailing physical copies of any Confidential Information, send the Confidential Information in a tamper-proof, labeled container, with a tracking number and a delivery confirmation receipt;
- B. Not store any Confidential Information on portable or removable electronic media, such as CDs, DVDs, electronic tape, flash drives, etc.;
- C. Not leave Confidential Information in any medium unsecured and unattended at any time;
- D. Keep all physical copies (paper, portable or removable electronic media, or other physical representations) of Confidential Information under lock and key, or otherwise have sufficient physical access control measures to prevent unauthorized access;

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E. Password protect any laptop or other electronic device that contains Confidential Information. Additionally, any laptop or other electronic device that contains Confidential Information shall have its full hard drive encrypted with an encryption key of no less than 256 bits. Neither Party shall leave any laptop or other electronic device unattended without enabling a screen-lock or otherwise blocking access to the laptop or other electronic device. Each Party shall ensure that no password or other information sufficient to access a laptop or electronic device containing Confidential Information is attached to or located near the laptop or other electronic device at any time.

F. Secure the Confidential Information stored on its systems, including but not limited to any servers, by employing adequate security measures to prevent unauthorized access, disclosure and use of that information. These measures include appropriate administrative, physical, and technical safeguards, policies and procedures relating to data access controls. All Confidential Information must be secured in transit using secure FTP services or https/TLS 1.0+. Vendor must maintain industry recognized security practices to establish secure application(s), network, and infrastructure architectures.

G. Ensure that the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed as a result of the Services, and any supporting enterprise used, complies with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.

H. Conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Each Party will also have a written incident response plan, to include prompt notification of the other Party in the event of a security or privacy incident, as well as best practices for responding to a breach of Confidential Information security practices. Each Party agrees to share its incident response plan upon request.

I. Assure that its systems and Services include at least the following safeguards:

1. Include component and system level fault tolerance and redundancy in system design.
2. Encrypt user passwords in any data storage location and obfuscate password entry fields in any entry interface controlled by the discloser.
3. Encrypt Confidential Information at-rest and in-transit.
4. Authentication of users at login with a 256-bit or higher encryption algorithm.
5. Secure transmission of login credentials.
6. Automatic password change routine.
7. Trace user system access.
8. Secure (encrypt) the audit trails and system generated logs and ensure that they are stored in locations that are inaccessible to automated content discovery software.
9. Conduct or undergo system level testing whenever new functionalities are added to the system to reconfirm system security measures are retained and functional, and that interaction with the Board systems is not degraded or compromised.
10. Employ an in-line intrusion protection system that inspects incoming data transmissions.
11. Prevention of hostile or unauthorized intrusion.
12. Backup of all Confidential Information at least once every twenty-four (24) hours. Perform content snapshots at least daily and retain for at least ninety (90) days.

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J. Confidential Information shall be stored, backed up, and served only on servers located in the continental United States. Any network where Confidential Information may be stored shall have an in-line intrusion prevention system that inspects incoming data transmissions. Each Party shall have a documented disaster recovery plan for the electronic systems where Confidential Information may be stored. Data stored in cloud-based systems must be protected in the same manner as local data as described throughout the Agreement.

6.7. **Dissemination of Information:** A recipient shall not disseminate any Confidential Information to a third party without the prior written consent of the other Party. If either Party is presented with a request for documents by or is required to comply with disclosure requirements of any administrative agency or with a *subpoena duces tecum* regarding any Confidential Information which may be in its possession as a result of Services and/or materials provided under the Agreement, that Party shall immediately give notice to the other Party with the understanding that the disclosing Party shall have the opportunity to contest such process by any means available to it prior to submission of any documents to a court or other third party. A Party shall not be obligated to withhold delivery of documents beyond the time ordered by a court of law or administrative agency, unless the request for production or subpoena is quashed or withdrawn, or the time to produce is otherwise extended.

6.8. **Press Release; Publicity:** Vendor shall not issue publicity news releases, grant press interviews, or use any Confidential Information or Board intellectual property (as defined below), including but not limited to the CPS logo or the logos of any schools, during or after the performance of Services without the prior written consent of the Board's Chief Communications officer or his/her designee. Furthermore, Vendor may not photograph or film or cause others to photograph or film within any CPS school or facility without the prior express written consent of the Board's Chief Communications Officer or his/her designee.

6.9. **Unauthorized Access, Use, or Disclosure of Confidential Information:** If either Party becomes aware of any unauthorized access, use, or disclosure of the other Party's Confidential Information, it shall: (i) notify the other Party immediately, which shall be no more than forty-eight hours from that Party receiving notice of the unauthorized access, use or disclosure of the other Party's Confidential Information; (ii) take prompt and appropriate action to prevent further unauthorized access, use or disclosure of the other Party's Confidential Information; (iii) cooperate with the other Party and any government authorities with respect to the investigation and mitigation of any such unauthorized access, use, or disclosure, including the discharge of the other Party's duties under the laws; and (iv) take such other actions as the other Party may reasonably require to remedy such unauthorized access, use and disclosure, including if required under any federal or state law, providing notification to the affected persons. Vendor shall bear the losses and expenses (including attorneys' fees) associated with the breach of its obligations concerning the handling and protection of Confidential Information, including without limitation any costs: (1) of providing notices of a data breach to affected persons and to regulatory bodies; and (2) of remedying and otherwise mitigating any potential damages or harm of the data breach, including without limitation, establishing call centers and providing credit monitoring or credit restoration services, as requested by the Board. The Board shall bear any losses and expenses associated with its breach of obligations that are ordered by a court of law.

6.10. **Return or Destruction of Confidential Information:** In addition to compliance with the obligations set forth in HIPAA with respect to the return and destruction of Protected Health Information, each Party shall, upon request, destroy or return all Confidential Information provided by the other Party within five (5) business days of demand, or if no demand is made, it shall destroy or return all of the other Party's Confidential Information within five (5) days of the expiration or termination of this Agreement unless permission is received in writing to retain certain Confidential Information for a specific period of time. In the event of an election to destroy any Confidential Information, the Party being requested to destroy the Confidential Information shall provide an

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affidavit to the other Party attesting to such destruction. If any of the above items are lost or damaged while in a Party's possession, such items shall be restored or replaced at the expense of the Party responsible for the loss. Notwithstanding the foregoing, either Party may retain any Confidential Information required by either Party to abide by all relevant governmental regulations regarding the storage of testing and patient records.

6.11. **Volunteers, Employees, Agents and Subcontractors:** Vendor agrees to cause its volunteers, employees, agents, and subcontractors to undertake the same obligations as agreed to herein by Vendor.

6.12. **Survival:** The provisions of this Section 6 shall survive the termination or expiration of this Agreement for so long as a Party retains the other Party's Confidential Information.

7. **Use of Board's Network:** If at any time, Vendor has access to the Board's computer network, Vendor warrants that it is and shall remain in compliance with the Board's Information Security Policy adopted September 25, 2013 (13-0925-PO1), and the Board's Staff Acceptable Use Policy, adopted August 22, 2018 (18-0822-PO2), both as amended, during the term of the Agreement and any renewals thereof. Vendor shall not act or fail to act in any manner that will cause any CPS student to not comply with the Board's Student Acceptable Use Policy, adopted August 22, 2018 (18-0822-PO1), as amended.

8. **Intellectual Property:**

8.1. **Intellectual Property Defined:** "Intellectual Property" means all trademarks, trade dress, copyrights, proprietary technology (including software, user interfaces, and techniques), know-how, and other intellectual property rights, including those in the materials used, created, arising from and developed in the performance of obligations and Services under this Agreement.

8.2. **Board's Intellectual Property:** All Intellectual Property owned or controlled by the Board prior to, or created independently of this Agreement shall be and remain at all times "**Board's Intellectual Property**" provided such Board Intellectual Property shall not rely on the use of Vendor's Confidential Information or Vendor's Intellectual Property. Each Party agrees that all of the other Party's Confidential Information, shall at all times be and remain the property of the Party owning the Confidential Information and may not be used without permission from the other Party, including for publicity and marketing purposes as described in Section 6.8. No other Intellectual Property is anticipated to be generated during the performance of the Services. Upon written agreement between the parties, each Party may be licensed or permitted to use the other Party's Intellectual Property for specifically defined uses and terms.

8.3. **Vendor's Intellectual Property:** All Intellectual Property owned or controlled by Vendor prior to, or created independently of the performance of Services under this Agreement and all improvements thereto shall be and remain at all times "**Vendor's Intellectual Property**", provided such Vendor Intellectual Property shall not rely on the use of Board's Confidential Information or Board's Intellectual Property.

8.4. **Survival:** The obligations set forth in this Section shall survive the termination or expiration of this Agreement.

9. **Representations and Warranties of Vendor:** Each Party, to the extent applicable, represents and warrants that the following shall be true and correct as of the effective date of this Agreement and shall continue to be true and correct during the Term of this Agreement:

9.1. **Licensed Professionals:** Vendor is appropriately licensed under Illinois law to perform Services required under this Agreement and shall perform no Services for which a professional license is required by law and for which Vendor, its employees, agents, or subcontractors, as applicable, are not appropriately licensed.

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9.2. **Good Standing:** Vendor is not in default and has not been deemed by the Board to be in default under any other Agreement with the Board during the five (5) year period immediately preceding the effective date of this Agreement.

9.3. **Authorization:** Each Party represents that it has taken all action necessary for the approval and execution of this Agreement, and execution by the person signing on behalf of that Party is duly authorized by that Party and has been made with complete and full authority to commit that Party to all terms and conditions of this Agreement which shall constitute valid, binding obligations of that Party.

9.4. **Financially Solvent:** Vendor warrants that it is financially solvent, is possessed of sufficient working capital to complete all Services and perform all obligations under this Agreement.

9.5. **Gratuities:** No payment, gratuity or offer of employment was made by or to the Vendor , or to the best of Vendor's knowledge, by or to any subcontractors, in relation to this Agreement or as an inducement for award of this Agreement

9.6. **Research Activities and Data Requests:** Vendor shall not conduct research in the Chicago Public Schools or use CPS Student Data for research. In the event Vendor seeks to conduct research in the Chicago Public Schools or use CPS Student Data for research, Vendor shall comply with the Board's Research Study and Data Policy adopted on July 28, 2010, as may be amended from time to time. Vendor acknowledges and agrees that it may not begin any research activities or obtain data for research purposes without the prior written consent of the Chief Education Officer or his/her designee.

9.7. **Third Parties' Intellectual Property:** In performing and delivering the Services under this Agreement, Vendor shall not violate or infringe upon any patent, copyright, trademark, trade secret or other proprietary or intellectual property right of any third party and will not improperly use any third party's confidential information. Vendor shall have, without encumbrance, all ownership, licensing, marketing, and other rights required to furnish all materials and products that it furnishes to the Board under the Agreement and can grant or assign all rights granted or assigned to the Board pursuant to this Agreement.

9.8. **No Legal Action Preventing Performance.** Vendor has no knowledge of any action, suit, proceeding, or material claim or investigation pending or to its knowledge threatened against it in any court, or by or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, or before any arbitrator of any kind, that, if adversely determined, would materially affect Vendor's ability to perform its obligations under this Agreement.

9.9. **Free of Computer Viruses:** Each Party shall use commercially reasonable best efforts to ensure that the Services, including but not limited to any Software or other software used in the performance of the Services, do not introduce or transfer any malicious code, malware, Trojan horses, ransomware, worms or other computer viruses into the other Party's network, systems, and computers.

9.10. **Prohibited Acts:** Within the three (3) years prior to the effective date of this Agreement Vendor or any of its members if a joint venture or a limited liability company , nor any of its or their respective officers, directors, shareholders, members, managers, other officials, agents or employees (i) have been convicted of bribery or attempting to bribe a public officer or employee of any public entity and (ii) have been convicted of agreeing or colluding among contractors or prospective contractors in the restraint of trade, including bid- rigging or bid-rotating, as those terms are defined under the Illinois Criminal Code.

9.11. **Debarment and Suspension:** Vendor certifies to the best of its knowledge and belief, after due inquiry, that:

A. it, its principals, and its subcontractors providing Services under this Agreement are not barred from contracting with any unit of state or local government as a result of

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violation of either Section 33E-3 (bid-rigging) or Section 33E-4 (bid rotating) of the Illinois Criminal Code (720 ILCS 5/33A *et seq.*);

B. it, its principals, and its subcontractors providing Services under this Agreement are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency or any unit of State or local government; and

C. it, its principals, and its subcontractors providing Services under this Agreement have not violated the rules, regulations, or laws of any federal, state, or local government unit or agency.

“Principals” for the purposes of this certification means officers, directors, owners, partners, persons having primary management or supervisory responsibilities within a business entity; and, if a joint venture is involved, each joint venture member and the principals of each such member.

9.12. **Continued Disclosure Requirement:** If at any time during the Term of this Agreement Party becomes aware of any change in the circumstances that makes the representations and warranties stated above no longer true, that Party must immediately disclose such change to the other Party in accordance with the Notice provision of this Agreement.

9.13. **Survival:** All warranties in this Section shall survive inspection, acceptance, expiration or termination of this Agreement. Nothing in the foregoing warranties shall be construed to limit any other rights or remedies available to either Party under the law and this Agreement.

10. **Background Check.** Vendor shall comply with the following requirements and such other procedures as may be determined necessary by the Board from time to time for each employee, agent, volunteer or subcontractor who may have contact with a CPS student as a result of this Agreement (individually and collectively **“Staff”**) (**“Background Check”**). For purposes of this Section, contact via text messages, live chats, emails, any other digital or online media, telephone, in person, or through any other means shall be considered **“contact”**. Vendor shall not allow any Staff to have contact with students until Vendor has confirmed with the Board that each respective Staff has successfully completed the Background Check in accordance with the following requirements:

10.1. **Do Not Hire List.** The Board will perform a check of eligibility of each Staff who may have contact with a CPS student pursuant to this Agreement by checking the Board’s **“Do Not Hire”** (**“DNH”**) records (**“DNH Check”**). The Board will utilize the same DNH Check process that the Board uses for its own prospective staff. Staff with a DNH designation shall not provide Services hereunder.

10.2. **Criminal History Records Check.** Vendor shall, at its own cost and expense, have a complete fingerprint-based criminal history records check conducted on each Staff who may have contact with a CPS student pursuant to this Agreement through the process established by the Board, including using the Board’s contracted vendor for conducting such checks, and otherwise in accordance with the Illinois School Code (105 ILCS 5/34-18.5), which refers to and incorporates the Sex Offender and Child Murderer Community Notification Law (730 ILCS 152/101 *et seq.*), and the Murderer and Violent Offender Against Youth Registration Act (730 ILCS 154/1 *et seq.*) (collectively **“Criminal History Records Check”**). A complete Criminal History Records Check includes the following:

- A. Fingerprint-based checks through the Illinois State Police and the Federal Bureau of Investigation;
- B. A check of the Illinois Sex Offender Registry and the Nationwide Sex Offender Registry; and
- C. A check of the Illinois State Police Murderer and Violent Offender Against Youth Registry.

The results of each Criminal History Records Check shall be adjudicated by the Board. Staff shall not have contact with CPS students prior to successfully completing the Criminal History Records

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Check. When the Board determines that any Staff has not passed a Criminal History Records Check, such Staff shall not access any Board facility and shall not have contact with any CPS student hereunder.

10.3 Department of Children and Family Services Check. At Vendor's cost and expense, the Board shall have the right to check Staff who may have contact with a CPS student pursuant to this Agreement for indicated reports of child abuse and/or neglect with the Illinois Department of Children and Family Services ("DCFS") State Automated Child Welfare Information System (or a comparable determination of child abuse or neglect by a government agency in another jurisdiction) for each Staff ("DCFS Check"). Vendor shall follow the directives and processes of the Board for initiating any DCFS Check, and the results of each DCFS Check shall be adjudicated by the Board. Staff determined by the Board not to have passed a DCFS Check shall not access any Board facility and shall not have contact with any CPS student hereunder.

10.4 Background Check Representations and Warranties: With respect to each Background Check, Vendor further represents and warrants that Vendor shall:

- A. Utilize the process established by the Board for completing each Background Check and immediately initiate all action, as directed by the Board, to have such Background Check performed;
- B. Obtain from each of its prospective and current Staff and provide to the Board a signed copy of any release and consent required to conduct the Background Check in the form determined by, and as directed by the Board;
- C. Confirm with the Board's Chief of Safety and Security that each respective Staff has successfully completed the Background Check through the process established by the Board and complied with the Board's directives regarding the results of each Background Check before any contact with a CPS student may occur;
- D. When contact with a CPS student may occur, not allow any Staff to provide Services until a DNH Check, Criminal History Records Check, and DCFS Check have been completed by the Board and the results of the Background Check satisfy for the Board, at a minimum, the requirements of 105 ILCS 5/34-18.5 and the requirements of all other Acts and Laws referenced in this Section, as may be amended;
- E. Comply with and require compliance of all Staff with directives from the Board relating to any updates to any Background Check (which updates shall be received and adjudicated by the Board) and provide any other information requested by the Board necessary for the performance of the Background Check and its update process; and
- F. Immediately remove from any contact with any CPS student pursuant to this Agreement and otherwise terminate access for any Staff determined by the Board not to have passed a Background Check or update for any matters arising after an initial Background Check.

10.5 Allocation of Costs and Liquidated Damages. Vendor is obligated to cause the Background Check to be performed for all Staff who may have contact with any CPS student pursuant to this Agreement, and Vendor shall be responsible for the costs of such Background Check. Whether or not Vendor allocates the costs to its subcontractors shall not affect Vendor's obligations in this Section.

If Vendor fails to comply with this Section, in whole or in part, then, in addition to the Remedies set forth in this Agreement, the Board may exercise additional remedies, including but not limited to: (i) withholding payments due under this Agreement, and any other agreement Vendor may have or enter into with the Board until Vendor remedies such non-compliance to the Board's reasonable satisfaction; (ii) immediately terminating this Agreement without any further obligation by the Board of any kind (other than payment for Services previously rendered pursuant to the terms herein); (iii) seeking liquidated damages; (iv) or taking any other action or remedy available under this Agreement or by law.

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Liquidated damages shall be calculated as \$5,000.00 per breach of this Section, which, for purposes of clarity, for the aggregate calculation of liquidated damages, will include each instance of contact with CPS students by Staff as a separate breach. It is understood and agreed that Vendor's non-compliance with this Section shall constitute a material breach of this Agreement.

11. **Independent Contractor:** It is understood and agreed that the relationship of Vendor to the Board is and shall continue to be that of an independent contractor and neither Vendor nor any of Vendor's employees shall be entitled to receive Board employee benefits. Vendor is the common law employer of the individuals who perform Services for the Board. As an independent contractor, Vendor agrees to be responsible for the payment of all taxes and withholdings specified by law which may be due in regard to compensation paid by the Board. To the extent that Vendor is subject to taxes under Section 4980H of the Internal Revenue Code, Vendor shall be solely responsible for paying such taxes. Vendor agrees that neither Vendor nor its employees, agents, and subcontractors shall represent themselves as employees or agents of the Board. Vendor shall provide the Board with a valid taxpayer identification number as defined by the United States Internal Revenue Code, including but not limited to, a social security number or federal employer identification number.

12. **Indemnification:** To the extent allowable by law, Vendor agrees to defend, indemnify, and hold harmless the Board, its members, employees, agents, officers and officials from and against liabilities, losses, penalties, damages, and expenses, including costs and attorney fees, arising out of all third party claims, liens, damages, obligations, actions, suits, judgments or settlements, or causes of action, of every kind, nature, and character (collectively "**Claims**") relating to, or arising or alleged to arise out of the acts or omissions of Vendor, its officials, agents and employees and subcontractors in the performance of this Agreement; provided Vendor shall not be liable for Claims to the extent that any Claim results from the Board's willful misconduct or gross negligence. If the Claims are caused by both the conduct and negligence of Vendor and the willful misconduct or gross negligence of the Board, the apportionment of such claims shall be shared between both Parties based upon the comparative degree of each Party's conduct and negligence, and each Party shall be liable for its own defense and its own costs including but not limited to the cost of defense and attorney's fees incident thereto. Nothing in this section shall impact the Board's right to maximum recovery under the insurance coverage that may be available and shall not be limited or otherwise impaired by the aforesaid limitations.

The foregoing obligation extends to and is intended to encompass any and all Claims that the Services infringe, misappropriate, or otherwise violate any confidentiality, proprietary, or intellectual property rights of a third party.

Furthermore, in the event that the Board is determined to be liable for taxes under Section 4980H of the Internal Revenue Code as a result of its use of Vendor's employees under this Agreement, Vendor shall indemnify the Board for any such liability. And, in the event of unauthorized access, use, or disclosure of the Board's Confidential Information arising or alleged to arise from the acts or omissions of Vendor, its employees, agents, and subcontractors, in addition to the obligations provided in this Section, Vendor shall cover any costs or fees associated with (i) providing notices of data breach to affected persons and to regulatory bodies and (ii) remedying and otherwise mitigating any potential damages or harm from the data breach, including but not limited to call centers and providing credit monitoring or credit restoration services as may be requested by the Board.

Vendor shall, at its own cost and expense, appear, defend and pay all attorney fees and other costs and expenses arising hereunder. In addition, if any judgment shall be rendered against the Board in any such action, Vendor shall, at its own expense, satisfy and discharge such obligation of the Board. The Board shall have the right, at its own expense, to participate in the defense of any suit, without relieving Vendor of any of its obligations hereunder. The Board retains final approval of any and all settlements or legal strategies which involve the interest of the Board.

However, if Vendor, after receiving notice of any such proceeding, fails to immediately begin the defense of such claim or action, the Board may (without further notice to Vendor) retain counsel and undertake the defense, compromise, or settlement of such claim or action at the expense of Vendor, subject to the right

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of Vendor to assume the defense of such claim or action at any time prior to settlement, compromise or final determination thereof. The cost and expense of counsel retained by the Board in these circumstances shall be borne by Vendor and Vendor shall be bound by, and shall pay the amount of, any settlement, compromise, final determination or judgment reached while the Board was represented by counsel retained by the Board pursuant to this paragraph, or while Vendor was conducting the defense.

To the extent permissible by law, Vendor waives any limits to the amount of its obligations to defend, indemnify, hold harmless, or contribute to any sums due under any losses, including any claim by any employee of Vendor that may be subject to the Workers Compensation Act, 820 ILCS 305/1 *et seq.* or any other related law or judicial decision (such as *Kotecki v. Cyclops Welding Corp.*, 146 Ill.2d 155 (1991)). The Board does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, or any other statute or judicial decision.

To the maximum extent permitted by applicable law, neither Party will have liability to the other party for any cause whatsoever and regardless of the form of action, whether in contract or in tort (including negligence) for any indirect, consequential, incidental, special, or exemplary damages under or related to this Agreement, even if such other Party has been advised of the possibility of such damages, unless any such damages attributable to Vendor evolve directly from Vendor's improper performance or improper resulting of the COVID Testing (but which shall not be read to mean delivery of false positive or negative test results that are generated through proper performance of the COVID Testing.) This limitation shall not affect the Board's right to maximum recovery under the insurance coverage that may be available and shall not be limited or otherwise impaired by the aforesaid limitations

The indemnities set forth herein shall survive the expiration or termination of this Agreement.

13. Termination, Suspension of Services, Events of Default, Remedies and Turnover of Documents:

13.1. **Early Termination:** The Board may terminate this Agreement in whole or in part, without cause at any time by giving 30 days' notice in writing the Board to Vendor in accordance with the notice provisions herein. The effective date of the termination shall be the date stated in the notice.

After notice is received, Vendor must restrict its activities and those of its subcontractors, to winding down any reports, analyses, or other activities previously begun. No costs incurred after the effective date of the termination are allowed unless the costs are non-cancellable and were incurred as a result of instructions given by the Board prior to termination.

Vendor must include in its contracts with subcontractors an early termination provision in form and substance equivalent to this early termination provision to prevent claims against the Board arising from termination of subcontracts after the early termination of this Agreement. Vendor shall not be entitled to make any early termination claims against the Board resulting from any subcontractor's claims against Vendor or the Board to the extent inconsistent with this provision.

13.2. **Suspension of Services:** The Board may request that Vendor suspend Services in whole or part. Vendor shall promptly resume supplying Services upon written notice from the Board and upon such equitable extension of time as may be mutually agreed upon, in writing, by the Board and Vendor. Responsibility for any additional costs or expenses actually incurred by Vendor as a result of remobilization shall be determined by mutual agreement of the parties.

13.3. **Events of Default:** Events of default ("**Events of Default**") include, but are not limited to, any of the following:

- A. Any action or failure to act by Vendor that affects the safety and/or welfare of any students or Board staff;
- B. Any material misrepresentation by Vendor in the inducement of the Agreement or the provision of Services;
- C. Breach of any term, representation or warranty made by Vendor in the Agreement;

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D. Assignment by Vendor for the benefit of creditors or consent by Vendor to the appointment of a trustee or receiver or the filing by or against Vendor of any petition or proceeding under any bankruptcy, insolvency or similar law; or

E. Failure of Vendor to supply the Services required hereunder in accordance with the terms and conditions of the Agreement, including, but not limited to, the following:

1. Failure to perform in accordance with terms, conditions, and specifications of this Agreement;
2. Failure to supply any portion of the Services herein at the time fixed for performance and in the manner specified herein;
3. Failure to supply the Services with sufficient personnel and equipment or with sufficient material to ensure the supply of Services due to a reason or circumstances within Vendor's reasonable control;
4. Failure to supply the Services in a manner satisfactory to the Board, or inability to supply the Services satisfactorily as a result of insolvency or filing for bankruptcy;
5. Failure to promptly re-supply Services that were determined by the Board to be defective or failing to meet the scope of Services within a reasonable time;
6. Discontinuance of the supply of the Services for reasons within Vendor's reasonable control; or
7. Failure to comply with any term of this Agreement, including but not limited to, the provisions concerning insurance and nondiscrimination, and any other acts specifically and expressly stated in this Agreement constituting an event of default.

13.4. **Remedies:** The Board in its sole discretion may declare Vendor in default if Vendor commits an Event of Default. The Chief Procurement Officer shall give the Vendor an opportunity to cure the default within thirty (30) days (the "**Cure Period**"). The Chief Procurement Officer shall give Vendor written notice of the default in the form of a cure notice ("**Cure Notice**").

The Chief Procurement Officer may give a **Default Notice** after a Cure Notice if: (1) Vendors fails to effect a cure within the Cure Period given in the applicable Cure Notice or (2) if the Event of Default cannot be reasonably cured within said Cure Period, Vendor fails to commence and continue diligent efforts to cure in the sole opinion of the Board. However, in the event that Vendor's failure to cure is solely the result of a third failure that stems directly from the COVID-19 pandemic, the parties agree to work together in good faith to determine the best course of action to address the Vendor's inability to cure. Possible courses of action include, but are not limited to, extending the Cure Period or the Board utilizing another vendor for services.

A written Default Notice shall be final and effective termination of the Agreement, in whole or in part as specified in the Default Notice, upon Vendor's receipt of such notice or on the date set forth in the notice, whichever is later. When a Default Notice is given, Vendor must discontinue all Services unless otherwise specifically directed in the notice.

Upon the occurrence of an Event of Default, the Board may invoke any or all of the following remedies:

- A. Terminate this Agreement, in whole or in part, as to any or all of the Services yet to be supplied effective at the time specified by the Board;
- B. Suspend performance of Services during the Cure Period if the default results from Vendor's action or failure to act which affects the safety or welfare of students or Board staff. In the event that the performance of Services is resumed, Vendor shall not be entitled

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to seek reimbursement from the Board for any additional costs and expenses incurred as a result of the remobilization;

- C. Specific performance, an injunction or any other appropriate equitable remedy;
- D. Receive from Vendor any and all damages incurred as a result or in consequence of an Event of Default;
- E. Money damages;
- F. Withhold all or part of Vendor's compensation under this Agreement; and
- G. Use an Event of Default as a basis to deem Vendor non-responsible in future contracts to be awarded by the Board and/or seek debarment of Vendor pursuant to the Board's Debarment Policy on Non-Responsible Persons in Procurement Transactions (08-1217-PO1), as may be amended.

The Board may elect not to declare Vendor in default or to terminate this Agreement. If the Chief Procurement Officer decides not to terminate, then she or he may decide at any time thereafter to terminate the Agreement, in whole or in part, in a subsequent Default Notice. The parties acknowledge that this provision is solely for the benefit of the Board and that if the Board permits Vendor to continue to supply the Services despite one or more Events of Default, Vendor shall in no way be relieved of any responsibilities, duties or obligations under this Agreement nor shall the Board waive or relinquish any of its rights under this Agreement, at law, in equity or statute.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall be construed as a waiver of any Event of Default or acquiescence thereto, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

If the Board's election to terminate this agreement for default under this Section is determined by a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered an early termination pursuant the Early Termination provision above.

13.5. Effect of Termination. Termination of this Agreement shall not relieve the Board of its obligations to pay all charges that accrued through the date of termination. The obligations which by their terms survive termination, including but not limited to the applicable confidentiality, intellectual property and indemnification provisions of this Agreement shall survive early termination.

13.6. Turnover of Documents and Records: Upon demand of the Board after termination of the Agreement for any reason or the expiration of the Agreement by its terms, Vendor shall turn over to the Board or its designee within five (5) days of demand, all materials, supplies, equipment owned or purchased by the Board, completed or partially completed work product or analyses, data, computer disks, documents and any other information relating in any way to this Agreement or the performance or furnishing of Services, except that Vendor may keep a copy of such information for its own records. In the event Vendor retains a copy for its own records, it shall continue to abide by the terms of this Agreement, specifically those regarding the use of such information.

14. Non-Liability of Board Officials: Vendor agrees that no Board member, employee, agent, officer or official shall be personally charged by Vendor, its members if a joint venture, or any subcontractors with any liability or expense under the Agreement or be held personally liable under this Agreement to Vendor, its members if a joint venture, or any subcontractors.

15. Notices: All notices, requests, consents, approvals, acknowledgements and waivers under this Agreement will be in writing and delivered to the applicable party, addressed to the designee for notification purposes set forth below:

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To Vendor:

Biodesix, Inc.
2970 Wilderness Place, Suite 100
Boulder, CO 80301
Attn: Legal Affairs (legalaffairs@biodesix.com)

To the Board:

Board of Education of the City of Chicago
42 West Madison
Chicago, IL 60602
Attn: Chief Health Officer

with a copy to:

General Counsel
Board of Education of City of Chicago
One North Dearborn
Ninth Floor
Chicago, IL 60602

Notice will be deemed given: (A) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (B) when verified by automated receipt. A party may change its address or designee for notification purposes by giving the other party written notice of the new address or designee and the date upon which it will become effective.

16. **Governing Law:** This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois. Vendor irrevocably submits itself to the original jurisdiction of those courts located in the County of Cook, State of Illinois, with regard to any controversy arising out, or relating to, or in any way concerning the execution or performance of this Agreement. Vendor agrees that service of process on Vendor may be made, at the option of the Board, by either registered or certified mail in accordance with the Notice Section of this Agreement. If any action is brought by Vendor against the Board concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

17. **Insurance.** The Board hereby acknowledges that it is self-insured, and that it has and shall maintain during the term of this Agreement coverage for the responsibilities performed by the Board in the amount of at least One Million Dollars (\$1,000,000.00). Vendor at its own expense, shall procure and maintain insurance for all operations and obligations or responsibilities under this Agreement whether performed by Vendor or by subcontractors. All insurers shall be licensed by the State of Illinois and rated A-VII or better by A.M. Best or a comparable rating service. Vendor shall submit to the Board satisfactory evidence of insurance coverage prior to commencement of Services. Minimum insurance requirements include the coverage set forth below and any additional coverage which may be specified by the Board:

17.1. **Workers' Compensation and Employers' Liability Insurance:** Workers' Compensation Insurance affording workers' compensation benefits for all employees as required by Illinois law and Employers' Liability Insurance covering all employees who are to provide Services under this Agreement with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence. The workers' compensation policy shall contain a waiver of subrogation clause.

17.2. **Commercial General Liability Insurance:** Commercial General Liability Insurance or equivalent with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate for bodily injury, personal injury and property damage liability. Coverage shall include, but not be limited to, all operations, contractual liability, independent contractors, products/completed operations (for a minimum of two (2) years following completion) and defense. Vendor agrees to continue insurance meeting these requirements for a minimum of two (2) years following termination or expiration of this Agreement. Vendor's

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Commercial General Liability policy cannot exclude claims or limits regarding sexual abuse and molestation.

17.3. **Automobile Liability Insurance:** Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with Services to be performed, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damages.

17.4. **Umbrella/Excess Liability Insurance.** Umbrella or Excess Liability Insurance with limits not less than \$2,000,000.00 per occurrence, which will provide additional limits for employers', general and automobile liability insurance and shall cover the Board and its employees, subject to that of the primary coverage.

17.5. **Cyber Liability and Privacy & Security Coverage.** Cyber Liability and Privacy & Security Coverage for damages arising from a failure of computer security, or wrongful release of private information, including expenses for notification as required by local, state or federal guidelines, with limits of liability not less than Ten Million Dollars (\$10,000,000.00) per claim. Coverage shall include failure to prevent transmission of malicious code. The Policy will be a claims-made program with any prior acts exclusion predating both the date of this Agreement and any earlier commencement of Services. Such coverage shall either be maintained continuously for a period of 2 years after expiration or termination of this Agreement or, if coverage is not maintained for a period of 2 years after expiration or termination of this Agreement, Vendor must secure a 2-year extended reporting provision.

17.6. **Professional Liability / Errors and Omissions:** When any professionals perform Services in connection with the Agreement, Professional Liability Insurance covering acts, errors, or omissions in conjunction with the professional services must be maintained with limits of not less than Four Million Dollars (\$4,000,000.00) each claim. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with or precede the start of Services under this Agreement. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years following completion of professional services.

17.7. **Additional Insured:** Vendor shall have its General, Umbrella, and Automobile Liability Insurance policies name "the Board of Education of the City of Chicago, a body politic and corporate, and its members, employees and agents, and any other entity as may be designated by the Board are named as additional insured on a primary basis without recourse or right of contribution from the Board".

The insurance company, or its representative, shall submit an insurance certificate evidencing all coverage as required hereunder and indicating the Additional Insured status as required above. The Board will not pay Vendor for any Services if satisfactory proof of insurance is not provided by Vendor prior to the performance of Services. The Certificate must provide thirty (30) days prior written notice of material change, cancellation, or non-renewal be given to:

Risk Management
Board of Education of the City of Chicago
42 W. Madison
Chicago, IL 60602
riskmanagement@cps.edu

Any failure of the Board to demand or receive proof of insurance coverage shall not constitute a waiver of Vendor's obligation to obtain the required insurance. The receipt of any certificate does not constitute an agreement by the Board that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. Vendor's failure to carry or document required insurance shall constitute

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a breach of Vendor's agreement with the Board. In the event Vendor fails to fulfill the insurance requirements of this Agreement, the Board reserves the right to stop the Services until proper evidence of insurance is provided, or this Agreement may be terminated.

Any deductibles or self-insured retentions on referenced insurance coverage must be borne by Vendor. Any insurance or self-insurance programs maintained by the Board of Education do not contribute with insurance provided by Vendor under the Agreement.

All subcontractors are subject to the same insurance requirements of Vendor unless otherwise specified in this Agreement. Vendor shall require any subcontractors under this Agreement to maintain comparable insurance naming Vendor, the Board inclusive of its members, employees and agents, and any other entity designated by the Board, as Additional Insureds. Vendor will maintain a file of subcontractor's insurance certificates evidencing compliance with these requirements.

The coverages and limits furnished by Vendor in no way limit Vendor's liabilities and responsibilities specified within the Agreement or by law. The required insurance is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

Vendor agrees that insurers waive their rights of subrogation against the Board.

Vendor must register with the insurance certificate monitoring company designated by the Board stated below, and must maintain a current insurance certificate on file during the entire time of providing services to the Board. Vendor must register and pay the initial annual monitoring fee to the insurance certificate monitoring company prior to performing services for the Board. The **initial** annual monitoring fee is currently Twelve Dollars (\$12.00) per year, but is subject to change.

Each year, Vendor will be notified 30 to 45 days prior to the expiration date of their required insurance coverage (highlighted on their latest submitted insurance certificate on file) that they must submit an updated insurance certificate with the insurance certificate monitoring company. Insurance certificate submissions and related annual fees are required to be made online at the dedicated website established by the certificate monitoring company identified below. Questions on submissions and payment options should be directed to the certificate monitoring company.

Certificate Monitoring Company:

Topiary Communications, Inc.
211 W. Wacker Dr.– Suite 220
Chicago, Illinois 60606
Phone – (312) 494-5709
Email – dans@topiarycomm.net

Website for online registration, insurance certificate submissions and annual fee payments:
<http://www.cpsvendorcert.com>

18. **Audit and Document Retention:** Vendor shall permit and cooperate in good faith in any audits by the Board provided audits are performed no more than once annually without cause, at a time convenient to Vendor and following Vendor's COVID-10 policies, including Board's Department of Procurement, or its agents for compliance by Vendor with this Agreement. Provided, however, the aforementioned limitations on audits shall not apply if an audit is necessary for the Board to comply with requests from the Inspector General or FOIA requests. Vendor will furnish the Board with such information as may be reasonably requested relative to the progress, execution, and costs of the Services. Failure of Vendor to comply in full and cooperate with the requests of the Board or its agents shall give the Board, in addition to all other rights and remedies hereunder, the right to charge Vendor for the costs of such audit. Vendor will maintain all records under the Agreement. As used in this Section, "**records**" shall include all correspondence, receipts, vouchers, memoranda, and other data, regardless of type or medium (including emails or other

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electronically stored data) relating to this Agreement and Vendor's performance of the Services. All records referenced above will be retained for at least five (5) years after the expiration or termination of this Agreement and shall be subject to inspection and audit by the Board. If any audit, litigation, or other action involving the records is being conducted or has not been resolved, all applicable records must be retained until that proceeding is closed. Vendor will include, in all of its subcontractor agreements for Services, provisions requiring subcontractors to maintain the above-described records and allowing the Board and/or its contractors the same right to inspect and audit said records as set forth herein.

19. **Assignment:** This Agreement shall be binding on the parties and their respective successors and assigns, provided however, that Vendor may not assign this Agreement or any obligations imposed hereunder without the prior written consent of the Board unless such assignment is a result of a sale, merger or acquisition of substantially all of Vendor's assets relating to this Agreement. In those cases, Vendor shall inform the Board of the sale, merger, or acquisition.

20. **Board Not Subject to Taxes:** The federal excise tax does not apply to the Board, and the State of Illinois sales tax does not apply to the Board by virtue of Exemption No. E9997-7109. The amounts to be paid to Vendor hereunder are inclusive of all other taxes that may be levied or based on this Agreement, including without limitation, sales, use, non-resident, value-added, excise, and similar taxes levied or imposed on the Services, but excluding taxes levied or imposed on the income or business privileges of Vendor, which remain the responsibility of Vendor.

21. **M/WBE Program:** Vendor acknowledges that it is familiar with the requirements of the Board's "*Remedial Program for Minority and Women Owned Business Enterprise Participation in Goods and Services Contracts*", which is incorporated by reference as if fully set forth herein. Vendor agrees to adhere to the minimum participation goals and to all other applicable MBE/WBE requirements as set forth in the plan. Vendor agrees to submit such documentation in connection with the plan as may be requested by the Board.

Vendor and its subcontractors shall provide all required compliance data with respect to the Remedial Plan via the Board's electronic system available at <http://cps.diversitycompliance.com>. Vendor and its subcontractors shall be responsible for responding to any requests for data or information by the noted response due dates, and shall check the electronic system on a regular basis to manage contact information and contract records. Vendor shall also be responsible for ensuring that all subcontractors have completed all requested items with complete and accurate information and that their contact information is current.

22. **Right of Entry:** Vendor and any of its officers, employees, subcontractors or agents, performing Services hereunder shall be permitted to enter upon Board property in connection with the performance of the Services hereunder, subject to the terms and conditions contained herein and those rules established by the Board and the subject school principal. Vendor shall provide advance notice to the Board whenever applicable, of any such intended entry. Consent to enter upon a site given by the Board shall not create, nor be deemed to imply, the creation of any additional responsibilities on the part of the Board. Vendor shall use, and shall cause each of its officers, employees and agents to use, the highest degree of care when entering upon any property owned by the Board in connection with the Services. In the case of any property owned by the Board, or property owned by and leased from the Board, Vendor will comply and will cause each of its officers, employees, and agents to comply with any and all instructions and requirements for the use of such property, any licenses for which being hereby incorporated by reference. Any and all claims, suits or judgments, costs, or expenses, including reasonable attorney fees, arising from, by reason of, or in connection with any such entries shall be treated in accordance with the applicable terms and conditions of this Agreement, including without limitation, the indemnification provisions contained in this Agreement.

23. **Non-Discrimination:** It shall be an unlawful employment practice for Vendor or any of its subcontractors to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, or other terms, conditions, or privileges of employment, because of such individual's race, color, national origin, religion, sex, gender identity/expression, sexual orientation, age or disability; or to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual from equal employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's race, color,

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national origin, religion, sex, gender identity/expression, sexual orientation, age, or disability. Vendor shall particularly remain in compliance at all times with: the Civil Rights Act of 1964, 42 U.S.C.A. § 2000a, *et seq.*; the Age Discrimination in Employment Act, 29 U.S.C.A. § 621, *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 701, *et seq.*; the Americans with Disabilities Act, 42 U.S.C.A. § 12101, *et seq.*; the Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400 *et seq.*; the Illinois Human Rights Act, 775 ILCS 5/1-101, *et seq.*; the Illinois School Code, 105 ILCS 5/1-1 *et seq.*; the Illinois Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.*; and the Chicago Human Rights Ordinance, ch. 2-160 of the Municipal Code of Chicago, all as may be amended, and all other applicable federal, state, county, and municipal statutes, regulations, ordinances and other laws. Nothing in this paragraph is intended nor shall be construed to create a private right of action against the Board or any of its employees. Furthermore, no part of this paragraph shall be construed to create contractual or other rights or expectations for Vendor's employees or Vendor's subcontractors' employees.

24. **Minimum Wage:** Vendor must comply with the City of Chicago Minimum Wage Ordinance (01-24), as may be amended, and the Board's Minimum Wage Resolution (14-1217-RS2) and any applicable regulations issued by the Board's Chief Procurement Officer. The Board's resolution adopts Chicago Mayor Executive Order 2014-1. A copy of the Mayoral Order may be downloaded from the Chicago City Clerk's website at: https://chicityclerk.s3.amazonaws.com/s3fs-public/document_uploads/executive-order/2014/Executive-Order-No-2014-1.pdf; the Board's Resolution may be downloaded from the Chicago Public School's website at: http://www.cpsboe.org/content/actions/2014_12/14-1217-RS2.pdf. In the event of any discrepancy between the summary below and the Resolution and Order, the Resolution and Order shall control.

Vendor must: (i) pay its employees no less than the minimum wage as stated by the City of Chicago ("**Minimum Wage**") for work performed under the Agreement; and (ii) require any subcontractors, sublicensees, or subtenants, to pay their employees no less than the Minimum Wage for work performed under the Agreement.

The Minimum Wage must be paid to: 1) All employees regularly performing work on property owned or controlled by the Board or at a Board jobsite; and 2) All employees whose regular work entails performing a service for the Board under a Board contract.

Beginning on July 1, 2015, and every July 1 thereafter, the Minimum Wage shall increase in proportion to the increase, if any, in the Consumer Price Index for All Urban Consumers most recently published by the Bureau of Labor Statistics of the United States Department of Labor, and shall remain in effect until any subsequent adjustment is made. On or before June 1, 2015, and on or before every June 1 thereafter, the City of Chicago may issue bulletins announcing adjustments to the Minimum Wage for the upcoming year.

The Minimum Wage is not required to be paid to employees whose work is performed in general support of Vendor's operations, does not directly relate to the services provided to the Board under the Agreement, and is included in the contract price as overhead, unless that employee's regularly assigned work location is on property owned or controlled by the Board. It is also not required to be paid by employers that are 501(c)(3) not-for-profits.

The term 'employee' as used herein does not include persons subject to subsection 4(a)(2), subsection 4(a)(3), subsection 4(d), subsection 4(e), or Section 6 of the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq.*, in force as of the date of this Agreement or as amended. Nevertheless, the Minimum Wage is required to be paid to those workers described in subsections 4(a)(2)(A) and 4(a)(2)(B) of the Illinois Minimum Wage Law.

The Minimum Wage is not required to be paid to employees subject to a collective bargaining agreement that provides for different wages than those required by the Board's Resolution, if that collective bargaining agreement was in force prior to December 17, 2014, or if that collective bargaining agreement clearly and specifically waives the requirements of the Resolution.

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If the payment of a prevailing wage is required and the prevailing wage is higher than the Minimum Wage, then the Vendor must pay the prevailing wage.

25. **Controlling Agreement:** Vendor shall not request any CPS students or staff including school principals, administrative staff or other CPS employee to sign any form, memorandum of understanding or any other agreement for the delivery of the Services except for those documents specifically approved by the Parties under this Agreement. Additionally, the Board and its users shall not be bound by the terms and conditions contained in any clickwrap/clickthrough agreement or license, end user license or any other agreement or license contained or referenced in the products or service or any quote provided by Vendor. Even if a CPS student or staff or other Board user agrees to any agreement or license contained or referenced in the products or services or a quote from Vendor, Vendor acknowledges and agrees that those terms and conditions are null and void and are not binding on the Board. Vendor acknowledges and agrees that the terms and conditions of this Agreement represent the entire agreement of the parties for the Services. No additional terms or conditions shall apply to the Board unless a written amendment to this Agreement is made and signed by the authorized representatives of both parties and approved by the Board's General Counsel.

26. **Continuing Obligation to Perform:** In the event of any dispute between Vendor and Board, Vendor shall expeditiously and diligently proceed with the performance of all its obligations under this Agreement with a reservation of all rights and remedies it may have under or pursuant to this Agreement at law or in equity.

27. **Conflict of Interest:** This Agreement is not legally binding on the Board if entered into in violation of the provisions of 105 ILCS 5/34-21.3, which restricts the employment of, or the letting of contracts to, former Board members within a one year period following expiration or other termination of their office.

28. **Indebtedness:** Vendor agrees to comply with the Board's Indebtedness Policy adopted June 26, 1996 (96-0626-PO3), as amended from time to time, which policy is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein.

29. **Freedom of Information Act:** Vendor acknowledges that this Agreement and all documents submitted to the Board related to this contract award are a matter of public record and are subject to the Illinois Freedom of Information Act (5 ILCS 140/1) and any other comparable state and federal laws and that this Agreement is subject to reporting requirements under 105 ILCS 5/10-20.44. Vendor has identified specific information as trade secrets and commercial or financial information where disclosure may cause competitive harm and claims that such information falls within a FOIA exemption. The Board shall redact those portions of the Agreement designated as trade secrets or proprietary information and Vendor acknowledges that the redacted Agreement shall be posted on the Board's website at www.cps.edu. Vendor agrees to defend, indemnify, and hold the Board harmless from and against any loss, damage, expense, penalty, or cost, including any and all legal fees, sought in every claim or suit of any kind arising out of the Board redacting those portions of the agreement designated as trade secrets or proprietary information.

30. **Ethics:** No officer, agent or employee of the Board is or shall be employed by Vendor or has or shall have a financial interest, directly, or indirectly, in this Agreement or the compensation to be paid hereunder except as may be permitted in writing by the Board's Code of Ethics adopted May 25, 2011 (11-0525-PO2), as amended from time to time, which policy is hereby incorporated by reference into and made a part of this Agreement as if fully set forth herein.

31. **Inspector General:** Each party to this Agreement hereby acknowledges that in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Chicago Board of Education has the authority to conduct certain investigations and that the Inspector General will have access to all information and personnel necessary to conduct those investigations.

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32. **Waiver:** No delay or omission by the Board to exercise any right hereunder shall be construed as a waiver of any such right and the Board reserves the right to exercise any such right from time to time as often and as may be deemed expedient.

33. **Joint and Several Liability:** In the event that Vendor, or its successors or assigns, if any, is comprised of more than one legal entity, then in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by Vendor shall be the joint and several obligation or undertaking of each such legal entity.

34. **Survival/Severability:** All express representations or indemnifications made or given in this Agreement shall survive the completion of Services or the termination of this Agreement for any reason. If any provision or part of this Agreement is held to be unenforceable, the Agreement shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable, and in all other respects the Agreement shall remain in full force and effect, provided, however, that if any such provision may be made enforceable by limitation thereof, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.

35. **Entire Agreement and Amendment:** This Agreement, including all exhibits attached to it and incorporated into it and the confidentiality agreement referenced in Section 6.1, constitutes the entire agreement of the parties with respect to the matters contained herein. All attached exhibits are incorporated into and made a part of this agreement. No modification of or amendment to this Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. Any prior agreements or representations, either written or oral, relating to the subject matter of this Agreement are of no force or effect. In the event of a conflict between the terms of this Agreement and any other documents, including but not limited to any terms and conditions that may be attached to the use of any electronic media provided by Vendor, the terms of this Agreement shall supersede and prevail.

36. **Counterparts and Electronic Signature:** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one instrument. A signature delivered by facsimile or electronic means shall be considered binding for both parties.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date set forth above.

BOARD OF EDUCATION OF THE CITY OF CHICAGO

By: Jonathan Maples
Jonathan Maples
Chief Procurement Officer
January 15, 2021
Date: _____

BIODESIX, INC.

By: Robin Harper Cowie
Robin Harper Cowie
Name: _____
Date: 1/8/2021

Board Report: 20-1216-RS1

Approved as to Legal Form:   

By: Joseph T. Moriarty
Joseph T. Moriarty
General Counsel

Attachments:

- Exhibit A: Scope of Services
- Exhibit B: Budget
- Exhibit C: Vendor's HIPAA Obligations

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EXHIBIT A SCOPE OF SERVICES

Name of Project: COVID-19 Surveillance Testing

Board's Project Manager: Alexandra Sontag

Email: assontag@cps.edu

Vendor's Project Manager:

Email:

Period of Performance: Start Date: 1/1/2021

End Date: 06/30/2021

This Scope of Services shall be conducted pursuant to the terms and conditions of the Services Agreement ("**Agreement**") dated January 1st, 2021 by and between Biodesix, Inc. ("**Vendor**") and the Board of Education of the City of Chicago commonly known as the Chicago Public Schools (the "**Board**" or "**CPS**"). Defined terms used in this Scope of Services shall have the same meanings as those ascribed to such terms in the Agreement.

I. Overview of Services

To safely reopen CPS schools, the Board will provide COVID-19 surveillance testing to employees returning in-person to work at CPS schools. All CPS employees working in-person at schools will have the opportunity to participate in surveillance testing. Surveillance testing will be school based testing and will allow the Board to assess community-level COVID-19 prevalence over time and to monitor for increasing or decreasing occurrences of COVID-19, rather than individually diagnosing each employee.

Vendor is a leading diagnostic company with a focus on lung disease. In response to the COVID-19 global pandemic, Vendor launched the SARS-CoV-2 ddPCR™ test ("**PCR Test**"), which tests for the presence of a virus that impacts the lung and causes COVID-19. Vendor has unique experience in managing COVID-19 testing protocols and shall provide COVID-19 testing solutions to the Board to finalize and execute a COVID-19 testing program for teachers, staff, and other employees.

As CPS develops its plan for COVID-19 surveillance testing, Vendor will provide input on the plan to provide strategic advice regarding best practices. Vendor will also develop testing and workflow protocol as well as training and tools for the Board. Vendor will also be responsible for providing the Board with supplies to collect and ship the PCR test samples and performing droplet digital PCR ("**ddPCR**") COVID-19 testing in its laboratory. Vendor will further provide the Board with a shipping solution for all diagnostic confirmatory tests and will provide reporting services as further described in this Scope of Services.

II. COVID-19 Surveillance Testing Program

Vendor will provide the Board with plans for a COVID-19 surveillance testing program (the "**Testing Program**"), that will consist of school based testing. The Testing Program will provide school based testing to over 500 CPS schools. The Testing Program will plan for all CPS employees reporting in-person to CPS schools to be tested monthly, with approximately twenty-five (25) percent of employees being tested weekly for COVID-19. To accomplish this, the plan for the Testing Program will account for approximately forty (40) teams of two (2) people who will drive to CPS schools to conduct testing at schools. Each team will consist of a Registered Nurse ("**RN**") and one additional support staff who will serve as a COVID Testing Technician ("**CTT**"). The Board will have four regional distribution sites with site managers to pick up tests each morning and deliver PCR tests to send for processing at the conclusion of the day. The testing teams will test approximately 2-3 schools per day. Additionally, the Board will have a RN circulate to various testing locations for quality assurance and adherence to test protocol. The Board will be responsible for providing RNs and CTTs for the Testing Program.

To be tested under the Testing Program, asymptomatic CPS staff will be tested at their school location. The Board will receive approximately 5,000 Abbott BinaxNOW tests ("**BinaxNOW Test**") a week from the Chicago Department of Public Health ("**CDPH**"), which receives the tests from the Illinois Department of Health ("**IDPH**"). The BinaxNOW Test has a 98% specificity.

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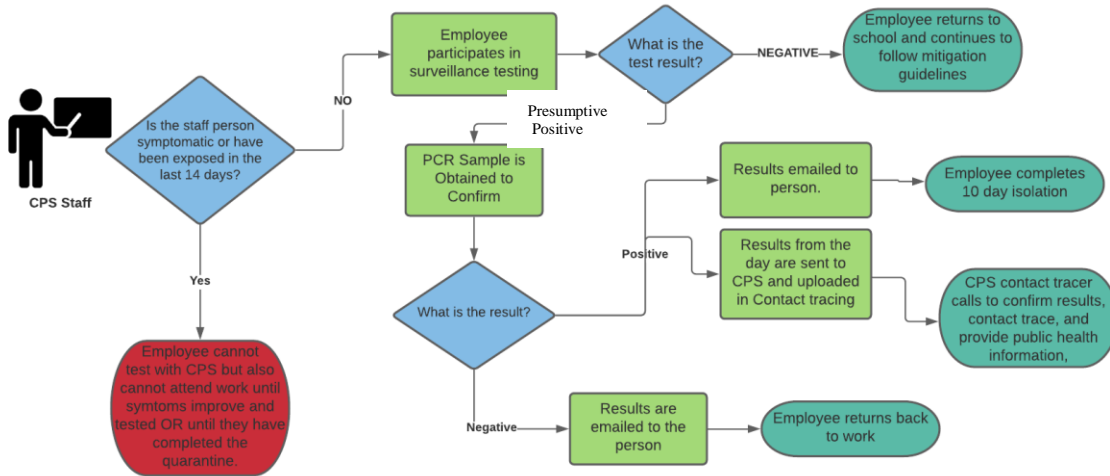
All CPS staff taking part of surveillance testing under the Testing Program will initially be administered the BinaxNOW Test. After taking the BinaxNOW Test, employees will return to work. Employees will later be informed whether they are either cleared to stay at work or that they will need to continue to the next step of surveillance testing. Those who continue to the next step in the Testing Program will be given a PCR Test. The PCR Test will be used for diagnostic purposes. That employee will go home and wait for their follow-up PCR results. If the results are negative, the employee may report back to work. If the results are positive, both the employee and CPS will be notified, at which point the employee will begin a ten-day isolation and the District will begin contact tracing.

Vendor’s aforementioned testing methodologies have all been determined by the Center for Disease Control and Prevention (“**CDC**”) and U.S. Food and Drug Administration (“**FDA**”) to be acceptable emergency use authorized diagnostic tests. Under the Testing Program, Vendor will comply with all applicable standards under the Clinical Laboratory Improvement Amendments of 1988 (“**CLIA**”) and College of American Pathologists. Vendor further operates a CLIA-certified laboratory, where it runs its PCR tests and can report results back to the individual and CPS on average within 24-48 hours of receiving the test sample.

III. Data Reporting and Management

Under the Testing Program, only confirmatory PCR test results will be reported. Vendor will manage the reporting of all diagnostic testing to individual employees, the State of Illinois and CPS. Vendor will also send de-identified aggregate data reporting for surveillance protocol by testing site. Vendor will report the volume of testing completed at each CPS school, as well as the number of PCR tests that are positive and negative. Vendor will also report the number of testing specimens that are unsatisfactory and could not yield a result.

IV. Overview of Process for Surveillance Testing with PCR Test Follow-Up



V. Responsibilities of Vendor

Under the Agreement, Vendor will have the following responsibilities:

- A. Provide input and expertise to CPS on Testing Program plan, as well as future testing programs (if desired)
 - o Biodesix will leverage experience to provide strategic counsel on CPS Testing Program plan according to best practices to date

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- B. Based on the Testing Program and any future programs, the Vendor will develop a testing manual, workflow layout, schematics, and other documents and recommendations to execute the Testing Program in the most optimized fashion
- C. Vendor is responsible for developing and assisting in the execution of training and tools for all Board healthcare staff members to execute the Testing Program, included but not limited to the following:
 - 1. Providing an overall surveillance testing program manual;
 - 2. Providing a testing manual to perform BinaxNOW Test sampling, processing, and read-out;
 - 3. Providing a testing manual to perform Biodesix droplet digital PCR (“ddPCR”) sampling, processing, and shipment to centralized laboratory for results;
 - 4. Providing training to Board’s contracted vendors on chain of custody and proper handling of test materials
 - 5. Tools to maintain inventory or supplies to execute workflow;
 - 6. Script to communicate BinaxNOW Test read-out under a surveillance protocol;
 - 7. Testing manual to perform and ship PCR testing when required; and
 - 8. Quality documentation binder for quality control logs and problem logs as required
- D. Vendor will provide a list of recommended supplies required to run the testing workflow
- E. Vendor will provide supplies to the Board in order to collect and ship Biodesix ddPCR test samples to centralized CLIA certified laboratory for processing and resulting
- F. Vendor will process and provide results for all viable ddPCR COVID-19 test samples for the following purposes:
 - 1. Confirmatory diagnostic testing under the Testing Program
 - 2. Blinded and randomized validity testing for BinaxNOW rapid antigen platform
 - a) Vendor will work with the Board to determine the appropriate number of tests to perform for validity testing and help the District alter strategy if necessary based on results
- G. Vendor will be responsible for reporting of all diagnostic PCR tests it performs under this Testing Program, including reporting to the individual employees, the state of Illinois, the Board (if individuals being tested have provided written consent for their results to be shared with Board), the ordering physician, and where required by law, statute or order.
- H. If requested by the Board, Vendor will liaise and/or offer tools to facilitate discussions on program between local health officials
- I.
- J. Vendor will Provide courier/shipping solution for all diagnostic confirmatory PCR tests
 - o Vendor will assess weekly fixed shipping cost once the program is operating at scale to determine whether the fixed rate of \$1,500 can be decreased based on the volume of weekly PCR tests.
- K. Vendor will de-identify aggregate data reporting for surveillance protocol by site/location
- L. Vendor will keep CPS apprised of technological innovations, policy, etc. that would impact the Testing Program
- M. Vendor is responsible for using and disclosing test results in accordance with all applicable state and federal laws including HIPAA.

VI. Responsibilities of the Board under the Testing Program

- A. The Board will be responsible for the approval and adoption of the final Testing Program plan and all future testing programs
- B. The Board will identify and communicate all testing locations (address and specific location within the building) to execute the testing workflow
- C. The Board will be responsible for identifying, hiring, and scheduling healthcare staffing members for the Testing Program.
 - 1. Vendor may be able to supplement healthcare staffing if requested; however, the Board will need to provide notice of the need for support within a reasonable and agreed upon time frame

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- D. The Board will identify an employee and certified ordering physician to complete an order for all required confirmatory diagnostic PCR tests. The ordering physician and the Board will ensure all individuals receiving confirmatory PCR testing will have signed an approved consent form prior to receiving testing. An example of a surveillance ordering workflow and Board healthcare staff member responsibilities is below:
1. For individuals that test presumptively positive on the rapid antigen surveillance test, and after they have been notified by the Board or Board designee (which may be an RN or nurse), Board employee is to complete the electronic PCR Manifest (“**Manifest**”) form. The Manifest will indicate the employee’s and Board or Board designee contact information for the delivery of results, and all required information to report results to the State of Illinois.
 2. Board healthcare staff member shall submit to Vendor a properly completed Manifest prior to any individual sampling or testing. The Manifest coupled with any electronic system used for consenting individuals, will indicate individual consent for testing and sharing results with third-party entities, including, but not limited to, Board or Board designees.
 3. While Vendor may assist Board in obtaining consents, Board shall remain legally responsible for properly consenting individuals for testing and for sharing their results regardless of the manner in which consent is obtained. Subject to the limitations set forth in the Agreement, Board shall indemnify Vendor for any claims that result from any consent issues.
- E. The Board is responsible for sourcing and maintaining sufficient inventory of all supplies required to complete the testing workflow, except for Vendor PCR tests and return shipping supplies. The Board’s healthcare staff is responsible for bringing all necessary supplies required to execute the workflow to each site location. This includes but is not limited to BinaxNOW Tests, PPE, cleaning supplies, biohazard disposal supplies, PCR testing supplies, and return shipping supplies.
- F. The Board will be responsible for obtaining written or electronic consents from employees to be tested under the Testing Program. Vendor may work with the Board to assist in obtaining consents) for
1. Performing both the BinaxNOW Test and PCR Tests; and
 2. Permission to reveal tests results to third-party entities, including, but not limited to, the Board, or the Board designees in whatever manner the Board sees fit, but which may be accomplished utilizing an electronic platform supplied by Vendor. An electronic platform supplied by Vendor may only be used with the written consent of the Board’s Chief Information Officer
- G. When applicable, the Board will be responsible for providing all required demographics necessary to bill clean claims to insurance. This includes, but is not limited to, provider ID, group ID, full name, date of birth, and insurance plan. This is only applicable for those employees who are fully insured under the Board insurance plan (as of December 2020, Blue Cross and Blue Shield of Illinois)
- H. For all confirmatory COVID Testing conducted on Biodesix premises, the Board shall be responsible for arranging for its individuals to be tested to receive or perform specimen collection and shall be responsible for returning samples to Vendor. Testing shall not commence until Vendor has receipt of a compliant specimen, notification of consent, and a completed Manifest, including all associated and required data necessary for reporting (i.e. a completed Manifest indicating individual and Board or Board designee contact information for the delivery of results). Results will be sent to an ordering professional where required and, when a Manifest is used, to all individuals listed on a Manifest, and to Board or Board designee (when consent to provide results to Board is indicated on the individual’s registration or if such written consent is provided to Vendor from Board). If Board or Board designee receives any results, Board warrants it will use such results in full

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compliance with Equal Employment Opportunity Commission (“**EEOC**”) regulations and policies, as well as any applicable State privacy laws and FERPA (if applicable).

- I. If Vendor cannot analyze a specimen because of improper collection or degradation in process, or is unable to obtain satisfactory test results, Vendor will notify Board and arrange for any resampling necessary. In the event Board engages Vendor for multiple rounds of testing, Vendor will work together with Board to reduce non-reportable results through mutual efforts to educate Institution on appropriate specimen collection, shipping, and handling requirements.
- J. The Board is responsible for site-specific daily reporting of total number tests performed, presumptive positive read-outs that required confirmatory PCR testing to be completed, invalid test results, and any individuals scheduled to come through the testing work flow but did not do so.

VII. Milestone Dates

Date	Wave	Number of employees and number of CPS schools	# of Testing Teams (Testing Team numbers are approximations)
Monday, January 4th	1	Approx. 5,000 employees return to 427 schools	20 teams
Monday, January 11th	1	Pre-K and students in cluster programs return to school (students are not tested)	30 teams
Monday, January 18th	1	Continued Wave 1	30 teams
Monday, January 25th	2	Approx. +15K employees return to work at CPS schools (20K total from Wave 1 and Wave 2) 478 total schools in-person	40 teams
By February 1st	2	K-8 students return (students not tested)	40 teams

VIII. Key Performance Indicators (“KPIs”)

The Key Performance Indicators shall be as follows:

Theme	Measure (KPI)	Definition	Source	Target
Performance or Quality of Service	Resource Delivery	On-time delivery of protocols, trainings, tests, test results, aggregated data	CPS-OSHW	Test results - within 24-48 hours of receipt of sample in the laboratory; aggregated surveillance data - daily; all else - as needed

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Financial	Invoicing	Invoices are timely, accurate and easy-to-understand for processing payment	CPS-Finance	Invoice within 30 days
	Cost Control	Unexpected cost changes and increases are well-managed and kept to a minimum	CPS-OSHW	Fixed Cost

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EXHIBIT B

BUDGET

Activity	Description	Estimated Cost	Additional Assumptions/Notes
Biodesix Partnership	Program Development	[REDACTED]	Includes protocol, workflow, training materials
	Hourly Consulting Rate (as needed for program change)	[REDACTED]	[REDACTED]
PCR Testing	CPS Employee PCR Test	[REDACTED]	[REDACTED]
	Vendor Employee PCR Test	[REDACTED]	[REDACTED]
	Shipping Flat Rate	[REDACTED]	[REDACTED]
	Antigen Validity PCR testing	[REDACTED]	[REDACTED]
	Data Collection & Reporting for PCR	[REDACTED]	[REDACTED]

Vendor shall be paid in accordance with the fees and costs set forth in the Service Budget above. The maximum compensation payable to Vendor during the Term of this Agreement shall not exceed Three Hundred Eighteen Thousand Five Hundred Dollars (\$318,500.00) (“**Maximum Compensation Amount**”), as may be amended.

It is understood and agreed that the Maximum Compensation Amount is a ‘not-to-exceed amount’ and is not a guaranteed payment. Compensation shall be based on actual Services performed during the Term of this Agreement, and the Board shall not be obligated to pay for any Services or other deliverables not in compliance with this Agreement. No expenses shall be reimbursed under this Agreement unless specified in the Budget above.

Per the Budget above, all expenses incurred to set-up and train to this program by Biodesix, as well as costs listed in the Budget for any Services actually provided to the Board shall be billed to and paid for by Board.

In the event the Agreement is terminated early, the Board shall only be obligated to pay the fees incurred up to the effective date of termination and Vendor shall promptly refund to the Board any payments received from Services and deliverables not provided.

Vendor will be compensated monthly via itemized invoices. Vendor shall submit invoices to Board for the Services as described in Section 3.3 of the Agreement. Preferred payment shall be via ACH Direct Deposit, but payment may be sent to the Vendor’s principal address.

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If Board disputes anything included in Vendor's invoices, Board shall notify Vendor, in writing, not more than five (5) business days after receipt of an invoice. Failure to respond shall be deemed approval of the charges. The Parties shall work in good faith to resolve any disagreements regarding invoices.

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EXHIBIT C

VENDOR'S HIPAA OBLIGATIONS

As applicable to the Services, Vendor agrees to comply with the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), as set forth in Title 45, Parts 160 and 164 of the Code of Federal Regulations (the "**CFR**"). In the event of conflicting terms or conditions, this Section shall supersede the other provisions of the Agreement.

1. **Definitions.** Capitalized terms not otherwise defined in the Agreement shall have the meanings given to them in Title 45, Parts 160 and 164 of the CFR and are incorporated herein by reference.
2. **Use and Disclosure of Protected Health Information.** Vendor shall use and/or disclose Protected Health Information ("**PHI**") only to the extent necessary to satisfy Vendor's obligations under the Agreement.
3. **Prohibition on Unauthorized Use or Disclosure of PHI.** Vendor shall not use or disclose any PHI received from or on behalf of the Board, except as permitted or required by the Agreement, as required by law, or as otherwise authorized in writing by the Board. Vendor shall comply with: (a) Title 45, Part 164 of the CFR; (b) State laws, rules and regulations applicable to PHI not preempted pursuant to Title 45, Part 160, Subpart B of the CFR; and (c) the Board's health information privacy and security policies and procedures.
4. **Vendor's Operations.** Vendor may use PHI it creates or receives for or from the Board only to the extent necessary to carry out Vendor's legal responsibilities. Vendor may disclose such PHI as necessary for Vendor's legal responsibilities only if:
 - a. The disclosure is required by law; or
 - b. Vendor obtains reasonable assurance, evidenced by written agreement, from any person or organization to which Vendor shall disclose such PHI that such person or organization shall:
 - i. Hold such PHI in confidence and use or further disclose it only for the purpose for which Vendor disclosed it to the person or organization or as required by law; and
 - ii. Notify Vendor (who shall in turn promptly notify the Board) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached.
5. **PID Safeguards.** Vendor shall develop, implement, maintain and use appropriate administrative, technical and physical safeguards to prevent the improper use or disclosure of any PHI received from or on behalf of the Board, or developed by Vendor (including its Staff and subcontractors) for the Board.
6. **Electronic Health Information Security and Integrity.** Vendor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures in compliance with Section 1173(d) of the Social Security Act, Title 42, Section 1320d 2 (d) of the United States Code and Title 45, Part 142 of the CFR to preserve the integrity and confidentiality of all electronically maintained or transmitted Health Information received from or on behalf of the Board pertaining to

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an individual. Vendor shall document and keep these security measures current.

7. **Protection of Exchanged Information in Electronic Transactions.** If Vendor conducts any standard transaction for or on behalf of the Board, Vendor shall comply, and shall require any subcontractor or agent conducting such standard transaction to comply, with each applicable requirement of Title 45, Part 162 of the CFR. Vendor shall not enter into or permit its subcontractors or agents to enter into any trading partner agreement in connection with the conduct of standard transactions for or on behalf of the Board that: (a) changes the definition, Health Information condition or use of a Health Information element or segment in a standard; (b) adds any Health Information elements or segments to the maximum defined Health Information set; (c) uses any code or Health Information elements that are either marked "not used" in the standard's implementation specification or are not in the standard's implementation specification(s); or (d) changes the meaning or intent of the standard's implementation specification(s).
8. **Access to PII.** In addition to the Audit and Document retention provisions found in the Agreement, Vendor shall provide access, at the request of the Board, to PHI in a Designated Record Set, to the Board or, as directed by the Board, to an individual to meet the requirements under Title 45, Part 164, Subpart E, Section 164.524 of the CFR and applicable state law. Vendor shall provide access in the time and manner set forth in the Board's health information privacy and security policies and procedures.
9. **Amending PHI.** Vendor shall make any amendment(s) to PHI in a Designated Record Set that the Board directs or agrees to pursuant to Title 45, Part 164, Subpart E, Section 164.526 of the CFR at the request of the Board or an individual, and in the time and manner set forth in the Board's health information privacy and security policies and procedures.
10. **Accounting of Disclosures of PHI.**
 - a. Vendor shall document such disclosures of PHI and information related to such disclosures as would be required for the Board to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Title 45, Part 164, Subpart E, Section 164.528 of the CFR.
 - b. Vendor agrees to provide the Board or an individual, in the time and manner set forth in the Board's health information privacy and security policies and procedures, information collected in accordance with Section 10 (i) above, to permit the Board to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Title 45, Part 164, Subpart E, Section 164.528 of the CPR.
11. **Access to Books and Records.** Vendor shall make its internal practices, books and records relating to the use and disclosure of PHI received from or on behalf of the Board available to the Board and to the Department of Health and Human Services ("**DHHS**") or its designee for the purpose of determining the Board's compliance with the Privacy Rule.
12. **Reporting.** Vendor shall report to the Board any use or disclosure of PHI not authorized by the Agreement, by law, or in writing by the Board. Vendor shall make the report to the Board's Privacy Official not less than 48 hours after Vendor learns

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of such unauthorized use or disclosure. Vendor's report shall at least: (a) identify the nature of the unauthorized use or disclosure; (b) identify the PHI used or disclosed; (c) identify, if possible to determine, who made the unauthorized use or received the unauthorized disclosure; (d) identify what Vendor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; (e) identify what corrective action Vendor has taken or shall take to prevent future similar unauthorized use or disclosure; and (f) provide such other information, including a written report, as reasonably requested by the Board's Privacy Official.

13. **Mitigation.** Vendor agrees to mitigate, to the extent practicable, any harmful effect that is known to Vendor of a use or disclosure of PHI by Vendor in violation of the requirements of the Agreement.
14. **Return or Destruction of Health Information.**
 - a. Except as provided in Section 14(b) below, upon termination, cancellation, expiration or other conclusion of the Agreement, Vendor shall return to the Board or destroy all PHI received from the Board, or created or received by Vendor on behalf of the Board. This provision shall apply to PHI that is in the possession of subcontractors or agents of Vendor. Vendor shall retain no copies of the PHI.
 - b. In the event that Vendor determines that returning or destroying the PHI is infeasible or violates any law, regulation or third-party payer policy, Vendor shall provide to the Board notification of the conditions that make return or destruction infeasible. Upon verification by the Board that the return or destruction of PHI is infeasible, Vendor shall extend the protections of the Agreement to such PHI and limit further uses and disclosure of PHI to those purposes that make the return or destruction infeasible, for so long as Vendor maintains such PHI.
15. **Automatic Amendment.** Upon the effective date of any amendment to the regulations promulgated by DHHS with respect to PID, the Agreement shall automatically amend such that the obligations imposed on Vendor as a Vendor remain in compliance with such regulations.
16. **Subcontractors and Agents.** Vendor shall require each of its subcontractors or agents who provide Work hereunder, or to whom Vendor may provide PHI or other Confidential Information received from, or created or received by Vendor on behalf of the Board, to agree to written contractual provisions that impose at least the same obligations of ownership and obligations to protect such PHI and other Confidential Information as are imposed on Vendor by the Agreement.
17. **Survival and Material Breach.** It is understood and agreed that the provisions of this Section shall survive the termination or expiration of this Agreement. Moreover, it is further understood and agreed that Vendor's non-compliance with any of its obligations and responsibilities under this Section shall constitute a material breach of this Agreement, and the Board also shall have the right to withhold payments due under this Agreement until Vendor remedies any and all such non-compliance to the Board's reasonable satisfaction.