MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING ("Memorandum") is entered into by and between COVID Check Colorado (hereinafter “CCC”) and Aurora Public Schools (hereinafter “APS”), which hereinafter may be collectively referred to as “the Parties” or individually referred to as “Party.” This agreement is entered into on the date of the last signature below (hereinafter “the Effective Date”).

WHEREAS, CCC is a limited liability company created to coordinate a testing, tracing, and response infrastructure to support employers, schools, and childcare providers as they plan for a safe return to work, schools, and child care facilities during and following the SARS-CoV-2 ("COVID-19") pandemic.

WHEREAS, APS is a School District operating in the City of Aurora, in the Counties of Adams and Arapahoe, State of Colorado.

WHEREAS, CCC and APS share a joint goal of supporting an effective COVID-19 response in Colorado. Specifically, the Parties share a goal of preventing an outbreak of COVID-19 at APS schools and facilities through regular testing, exposure alerting, and isolation.

NOW, THEREFORE, the Parties enter into the following Memorandum for the purpose of defining their roles and responsibilities in advancing this shared interest.

1. The Parties acknowledge and agree that they wish to engage in a strategic partnership to create a pilot project focused on responding to COVID-19 within APS by providing APS staff access to testing as well as virus tracking tools (collectively, the “Subscribed Users”).

2. CCC will make reasonable efforts to provide to APS a set of tools designed to enable Subscribed Users access to a set of services (the “Services”) that are outlined in Appendix A. CCC will make reasonable efforts to use its own resources, systems, and the systems of third parties, to provide the Services.

3. CCC agrees to work with other third-party clinical providers to make COVID-19 testing available for all Subscribed Users for ten months following the Effective Date.

4. The Parties agree that some or all of the following tests will be available: Nasopharyngeal swab, oropharyngeal swab, venipuncture blood draw, finger prick blood draw.

   APS agrees to pay CCC based on the Per Test Fees and Per Subscribed User Fees set out in Appendix B (collectively, the “Testing Fees”). CCC will submit invoices to APS for the Testing Fees on a monthly basis (the “Fee Schedule”). APS will pay the Fees to CCC within thirty (30) days after receipt of each invoice by ACH or wire transfer, to the account number provided by CCC from time to time. The Parties agree that the Testing Administration set out in Appendix B represents the Parties’ joint understanding of the frequency with which Subscribed Users will test.
5. APS agrees to provide information to all Subscribed Users about the available testing. Specifically but without limitation, APS agrees to provide (1) CCC’s website address to all Subscribed Users in advance of testing and (2) information on pre-registering for testing to all Subscribed Users in advance of testing, where applicable.

6. The Parties jointly agree that all Subscribed Users must sign an Authorization for the Release of Information and Test Results (“Testing Release”) prior to being tested. The Parties agree that all Subscribed Users under the age of 18 must have a parent or guardian sign a Testing Release prior to being tested. CCC agrees to provide all Subscribed Users, and the parent(s) or guardian(s) of all Subscribed Users under the age of 18, with a copy of the Testing Release prior to testing. CCC agrees to provide copies of the Testing Release in English and Spanish.

7. The Parties jointly agree to provide each Subscribed User, and the parent(s) or guardian(s) of all Subscribed Users under the age of 18, with a copy of the Authorization for the Release of Information and Test Results to APS (“Release to APS”) on or prior to the day of testing. The Parties agree that testing shall not be contingent on the completion of the Release to APS.

8. The Parties agree that all data collected during testing shall be used for the sole purpose of providing services under this agreement and in accordance with all applicable polices and notices posted by each respective Party.

9. Neither Party shall be authorized to bind the other without express prior written consent.

10. This Memorandum constitutes the entire understanding of the Parties with respect to their individual and collective roles and responsibilities in carrying out the terms of this Memorandum and supersedes any prior or contemporaneous agreements or understandings. This Memorandum may be amended only by a written agreement signed by both Parties.

11. To the extent allowed by law, APS agrees to hold harmless, defend and indemnify CCC against all liabilities, damages, losses, costs, fees (including reasonable legal fees), and reasonable expenses actually incurred in connection with any third-party legal proceeding (including a government agency action) (“Claims”) to the extent that such Claims arise out of or are related to (a) any negligent acts or omissions, or willful misconduct of APS, (b) APS’s infringement, misuse or misappropriation of any personal data regarding participants, including, without limitation, any personal information, contact information, and test information, and (c) APS’s infringement, misuse or misappropriation of any billing or insurance information regarding participants. Notwithstanding the foregoing, APS shall have no liability under this Section to the extent that such Claims arise or result from (x) CCC’s negligence or willful misconduct, (y) CCC’s breach of this Memorandum, or (z) CCC’s infringement, misuse or misappropriation of any personal data regarding participants.
12. Under no circumstance shall any provision of this Agreement be construed as constituting a waiver of immunity on the part Aurora Public Schools or for any of its facilities under Colorado Governmental Immunity Act.

13. Except as expressly set forth herein, NEITHER PARTY MAKES ANY OTHER WARRANTY OR REPRESENTATION OF ANY KIND, AND EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES OF NON-INFRINGEMENT OF ANY PATENT OR OTHER INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY. UNDER NO CIRCUMSTANCES WHATSOEVER WILL CCC OR APS BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOSSES RESULTING FROM BUSINESS INTERRUPTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

14. For purposes of this Memorandum, “written consent” includes consent provided by electronic mail, if sent by an authorized individual.

15. A Party may terminate its participation in this Memorandum for any reason by providing fifteen (15) days’ written notice.

16. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Memorandum. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Memorandum, to the extent capable of execution. Venue for any action related to this Memorandum shall be in the Denver District Court.

17. This Memorandum may be executed in any number of counterparts, each of which is deemed an original and which together shall be deemed one and the same Memorandum. Signatures transmitted by facsimile or via email as a scanned PDF file shall be deemed original signatures to this Memorandum.

18. This Memorandum shall be effective from the Effective Date and will remain in effect for six (6) months from the date of the last signature below. This Memorandum may be renewed for a further period by a written agreement signed by the Parties.

The Parties whose signatures appear below attest to having the authority to enter into this Memorandum and agree that this Memorandum shall become effective upon the date of the last signature.
For COVID Check Colorado:

Michael C. Johnston  
President and CEO  
Gary Community Investment Company,  
as Manager

Date: __________

For Aurora Public Schools

Kyla Armstrong-Romero  
Board of Education  
President

Date: __________
Appendix A – The Services

I. CCC’s Responsibilities. CCC will, along with third-party partners, provide the following Services to APS:

1. An on-line platform usable on mobile and other computing devices
   a. that will provide information about the Services and guidance to Subscribed Users on roles, responsibilities, and overall guidance on the purpose of the Services and their role in keeping APS as safe as possible.
   b. that will allow Subscribed Users to self-enroll, provide consent, and schedule Molecular and/or Antibody tests according to timeframes and at locations to be agreed upon by the Parties. Information to be entered at the time of self-enrollment to be agreed upon by the parties and subject to change over time.
      i. The platform will provide on-going notifications to a Subscribed User as to time and location of their testing.
   c. that will allow Subscribed Users to enter information, via a mobile application, at any time, concerning their personal status. Such information to be agreed upon by the parties and will be subject to change over time.
   d. A portal for APS to be able to track Subscribed Users enrollment in testing, testing status, test results, and on-going status of the Subscribed Users.

2. Access for Subscribed Users to testing sites (“Sites”) to facilitate testing. The actual location(s) and timing of such sites to be agreed by the Parties.

3. CCC will make all reasonable efforts to ensure that all of the following tests will be available initially: Nasopharyngeal and oropharyngeal swabs for Molecular testing. Provision of Antibody Tests will be made in due course based on demand and availability of high-quality, FDA EUA approved tests either collected via venipuncture blood draw or a finger prick blood draw.

4. CCC will be responsible for collecting Subscribed User Tests, routing them to the appropriate laboratory, collecting results from the laboratory, and entering test results into the Platform and made available to APS via the portal. CCC will use laboratories that will bill private insurance, Medicare, Medicaid, or other payers designated under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. APS will not be obligated to pay for such tests. However, APS may request to use a laboratory different from CCC’s list of laboratory offerings with a commitment to pay for the tests (“Client Pay”). The price for these tests will be negotiated in advance and may be subject to change from time to time. In this Client Pay situation, CCC will bill APS and reimburse the appropriate laboratory.

II. APS’s Responsibilities. APS will be responsible for:

1. Providing a digital list of Subscribed Users with relevant information that can be entered into the Platform. APS will be responsible for notifying CCC of any updates, additions or deletions to the list.

2. For designating the Ordering Provider for the Tests and for interacting directly with Subscribed Users as to the meaning of the results and for providing any protocols to Subscribed Users based on the results.
3. Ensuring that all Subscribed Users are tested at a frequency described in Appendix B, Paragraph (c), beginning on the date of each Subscribed User’s first test (the “Initial Testing Date” for each Subscribed User). Testing shall continue at the frequency described in Appendix B, Paragraph (c), unless the Parties agree in writing (email to suffice) to a different frequency for Subscribed Users or some subset thereof. CCC shall not withhold consent unreasonably for testing frequencies proposed by APS.
Appendix B – Testing Administration and Fees

a) Per Test Fee. APS agrees to pay CCC the Testing Fees listed below in accordance with the Fee Schedule as outlined in the Memorandum.

| Per Test Fees | $10 per test administered pursuant to this Memorandum. |

b) Per Subscribed User Fees. CMU agrees to pay the Per Subscribed User Fees listed below in accordance with the Fee Schedule as outlined in the Memorandum. CCC agrees to waive the Per Subscribed User Fees in every month where the Per Test Fees exceed $50,000.00.

| Per Subscribed User Fees | $2.00 per Subscribed User, as defined in this Memorandum. |

c) Testing Frequency. The Parties agree that each Subscribed User shall test at the Testing Frequency listed below.

| Testing Frequency | Not more than every 14 days |

d) Estimated Total Subscribed Users. For purposes of planning for the provision of the Services, the Parties agree that the total number of Subscribed Users will not exceed the number listed below. The Parties agree that the Estimate below will be used only for planning purposes and will be considered an estimate. The Parties agree that this number can be changed by APS at any time through written communication to CCC (email to suffice).

| Estimated Total Subscribed Users | 6,000 |

e) Estimated Total Testing Fees. Based on the foregoing, the Parties agree that the total estimate Testing Fees for the duration of this MOU shall be $720,000.00. The Parties agree that this number is an estimate intended to assist in planning. The Parties also agree that the total Testing Fees amount is subject to change based on actual testing during the duration of this Memorandum.