

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (hereinafter referred to as the “Agreement”) is made as of this _____ day of _____, 2021 by and between:

Mirimus, Inc., a Delaware Corporation, having an office and place of business at 760 Parkside Ave, Suite 206, Brooklyn, NY 11226 (the “Licensee”),

and

THE _____ SCHOOL DISTRICT, a school district of the State of New York, having an office and place of business at _____ (the “District”).

(The Licensee and District may be referred to herein individually as a “Party” and collectively as the “Parties”).

RECITALS:

WHEREAS, the County of Westchester, acting by and through the Westchester County Department of Health (the “County”), entered into an agreement with the Health Research, Inc., dated August 2, 2021, pursuant to which the County was awarded a grant to fund COVID-19 screening testing services of students, teachers and staff in public and private schools kindergarten through grades 12 (K-12) (the “Program”); and

WHEREAS, the purpose of the Program is protect students, teachers and staff as they enter the classroom by preventing the spread of SARS-CoV-2, the virus that causes COVID-19, in the schools through screening testing, which is an important part of the multi-layered approach to keep schools open and operating safely as it allows for the early detection and isolation of pre-symptomatic and asymptomatic individuals; and

WHEREAS, the goal of the Program is to minimize the spread of COVID-19 in schools and to maximize in-person learning days, which is important to the health, development and well-being of children; and

WHEREAS, the County and the Licensee entered into an agreement, dated _____, pursuant to which the County provided funding to the Licensee to implement the Program in schools districts in the county (the “County/Licensee Agreement”); and

WHEREAS, the Parties wish to enter into this Agreement to grant the Licensee access to the school facilities to implement the Program at no cost to the District.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties hereby stipulate and agree as follows:

1. The District hereby grants the Licensee permission enter upon, access and use space in all K-12 schools (the “Licensed Areas”) located within the District during regular work days and

regular work hours to conduct collection events for the distribution, use, collection and transport of the COVID-19 saliva-based PCR test kits (“Test Kits”) and the administration of the Program as set forth in this Agreement.

The testing for the Program shall consist of initial “gateway” testing to be completed no later than the end of the third week of the start date for each respective school and regular recurring 20% weekly testing thereafter in each school.

The parties recognize and agree that the WCHD can and may work with the Licensee to change the 20% allocation in the interest of public health.

2. The grant under this Agreement shall include the Licensee’s officers, employees, agents, and contractors (“Permitted Persons”) provided they comply with each and every term of this Agreement. The Licensee shall be responsible to ensure that all Permitted Persons comply with each and every term of this Agreement. All Permitted Persons are neither employees of the District nor under contract with the District, and the Licensee alone is responsible for their work, direction, compensation and personal conduct while so engaged.

3. The Licensee will provide, at its sole cost and expense:

(a) The Test Kit for each student, teacher and staff person that consents to participate in the Program through the execution of the consent forms attached hereto as Schedules “A” and “B”, and all other equipment, materials and supplies required for the distribution, use, collection and transportation Test Kits;

(b) All Licensee staff necessary and required to use the Licensed Areas for the use permitted hereunder, and the Licensee will be solely responsible for the control of its personnel, its labor and employee relations and its policies relating to wages, hours, working conditions and other employment conditions;

(c) Full time supervision and coordination of the Licensee staff at all times the Licensed Areas are being used by the Licensee for the use permitted hereunder and provide at its sole cost and expense all necessary tools, appliances, equipment and personal property necessary to undertake the use permitted hereunder;

(d) All computers and other communication equipment, and other supplies and equipment required for use at the Licensed Areas by the Licensee’s employees and staff; and

(e) All cleaning, disinfecting, hand sanitizing, and other products required for Licensee personnel using the Licensed Areas, and all appropriate and necessary personal protective equipment;

4. In accordance with applicable law, the Licensee shall be responsible for and shall maintain good discipline and proper behavior on the part of all Permitted Persons acting in the course and scope of their employment and agrees to remove all Permitted Persons whose actions or failure to act shall in the sole judgment of the District, after consulting with the Licensee, be deemed be detrimental to the District.

5. The Licensee shall comply with and shall be responsible to ensure that all Permitted Persons comply with all federal, state and local laws, rules and regulations applicable to the use permitted hereunder.

6. With the exception of the District's responsibilities set forth below, the Licensee shall be responsible for all costs and expense to run and operate its Program, including without limitation, the Test Kits, supplies, equipment, materials, staff, personnel, computers and other communication equipment.

7. The Licensee shall carry liability insurance of i) commercial general liability with limits of insurance of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate, ii) business automobile liability with limits of insurance of not less than \$1,000,000 each accident, which must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles, and iii) Workers' Compensation and Employer's Liability with limits of insurance of not less than \$100,000 each accident for bodily injury by accident and \$100,000 each employee for injury by disease. If requested, the Licensee will provide a certificate of insurance to the Licensors, naming the Licensors as "additional insured" on the Licensee's general liability policy and automobile policy with respect to the use of the Licensed Areas and the equipment and supplies of the Licensee located there.

8. The School District shall not be charged for the participating in the Program or Test Kits. The Licensee agrees that it will not bill the School District, any school, teacher, student or staff person either directly or through private insurance, Medicare and/or Medicaid for any testing or services provided under this Agreement.

II. RESPONSIBILITIES OF DISTRICT: The District agrees to the following provisions at no charge to the County:

1. The District agrees that no fee shall be charged the Licensee for use of the Licensed Areas or otherwise under this Agreement.

2. The District agrees to provide the Licensee with appropriate space as mutually agreeable to the Parties, including tables and chairs, for the Licensee to conduct the collection events and administer the Program.

3. The District agrees to provide access to the Wi-Fi service and, if and to the extent possible, access to and use of hard-wired telephones and/or telephone and computer connections.

4. The District will obtain consent forms from all parents, teachers, and staff who want to participate in the Program using the forms attached hereto as Schedules "A" and "B".

5. The District will coordinate with Licensee to implement the gateway testing of all consenting students, teachers, and staff (regardless of vaccination status) to be completed no later than the end of the third week of the start of the each respective school.

6. The District will coordinate with Licensee to implement weekly testing of 20% of consenting students, teachers, and staff (regardless of vaccination status) from September 13, 2021 through the start of the December break.

7. The District agrees to provide a point person to communicate with the Licensee to help coordinate the initial communication of the Program, updates, and consent forms to the parents, teachers and staff. The District point person will also work with the Licensee on any district-level planning, coordination and implementation.

8. The District agrees to provide a point person for each school in the District to work with the Licensee to establish a testing schedule (dates and time for gateway testing and regular recurring weekly times for the 20% testing). They will also work with the Licensee to establish the logistics of sample collection events (arranging 20% testing cohorts, providing a roster of persons to be tested upon request, establishing where in the building the collection will happen, giving wi-fi access, how to stagger students/staff during the collection event). On the day of the collection event in the school, they will be present to ensure the Licensee can get in and set up and will work with the testing staff to ensure the process runs smoothly. The Licensee shall provide the Test Kits to all consenting students, teachers and staff on the day designated by the Licensee for administration of the Program. Following the students, teachers and staff collection of the saliva, the student, teachers and staff shall be required to deposit their Test Kits in the Licensee's designated repository located in the school for collection or at the Licensee's designated collection event.

9. The District will coordinate with Licensee to ensure timely notification of positive results to students, teachers, and staff.

10. The District will cooperate with the WCDH in communicating the Program to all parents, teachers and staff. The District will cooperate with the County to isolate, investigate and conduct contact tracing for individuals with positive results identified through screening testing program.

11. The District shall ensure that only teachers, students and staff persons who have properly completed and submitted the consent forms attached hereto, and who have not revoked their consent forms, participate in the Program and submit completed Test Kits. The District shall require each school to designate an onsite staff person to be present at the collection of the completed Test Kits to check the name of each person who wishes to submit a completed Test Kit against the school's roster of teachers, students and staff persons who have proper consent forms on file.

12. The Licensors acknowledge that there is no guaranteed minimum number of COVID-19 screening tests being provided or promised under this Agreement. In addition, the Licensors acknowledge that, while the COVID-19 screening tests being provided under this Agreement may be used to assist the Licensors in aligning its testing strategy to the requirements set forth by the NYSDOH in its determination documents entitled Commissioner's Determination on COVID-19 Testing Pursuant to 10NYCRR 2.62, dated September 2, 2021 (the "Commissioner's Determination"), the Program and the screening testing being provided under this Agreement does

not satisfy the requirements of the Commissioner's Determination, and the Licensor is responsible for complying with the requirements of the Commissioner's Determination.

III. TERM: The term of this Agreement shall commence upon execution and terminate on December 31, 2021. If the County renews the County/Licensee Agreement for an additional 7 month period from January 1, 2022 to July 31, 2022, the Licensee shall have the right to renew this Agreement for an additional 7 month period from January 1, 2022 to July 31, 2022 on the same terms and conditions as set forth in this Agreement, by providing written notice to the School District.

IV. TERMINATION:

1. In the event of a material breach by a Party of any of the terms of the Agreement and such breach remains uncured for forty-eight (48) hours after service on such Party of written notice thereof, or in the case of a default which cannot with due diligence be cured within said forty-eight hours, the breaching Party fails within such forty-eight hour period to commence to cure the same and thereafter to diligently continuously prosecute such cure to completion (it being intended in connection with a default not susceptible of being cured with due diligence within such forty-eight hour period that the breaching Party's time to cure shall be extended for such period as may be reasonable necessary to complete the same with due diligence), the non-breaching Party, in addition to any other right or remedy it might have under the law, may terminate this Agreement in whole or in part.

2. The District may terminate this Agreement with or without cause at any time by giving ten (10) days written notice to the Licensee.

3. This Agreement is subject to the County/Licensee Agreement. If the County terminates the County/Licensee Agreement in whole or in part, this Agreement shall terminate in whole or in part, and the Licensee shall immediately provide the School District with written notice of such termination.

V. ADDITIONAL TERMS:

1. Upon revocation or termination of this Agreement, the Licensee will promptly discontinue the use of the Licensed Areas and thereupon remove all of its property from the Licensed Areas and restore the Licensed Areas to the same and safe and sanitary condition as the Licensed Areas was when the Licensee began use, ordinary wear and tear excepted.

2. The District expressly agrees that neither it nor any contractor, subcontractor, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County.

3. (a) The Licensee agrees, that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the District, the Licensee shall defend, indemnify

and hold harmless the District, its elected officials, officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, reasonable attorneys' fees or loss caused by the willful or intentional misconduct or negligent or reckless acts or omissions, by the Licensee, the Licensee's officers, the Licensee's employees or third parties under the direction or control of the Licensee on District property.

(b) The District agrees, that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the Licensee, the District shall defend, indemnify and hold harmless the Licensee, its elected officials, officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, reasonable attorneys' fees or loss caused by the willful or intentional misconduct or negligent or reckless acts or omissions of the District and third parties under the direction and control of the District.

4. Positive test results will be reported to the Superintendent of the School District or his/her designee, shall be kept confidential, and shall be maintained as medical records in accordance with applicable laws, rules and regulations governing the storage of such records.

5. All test records and medical records shall be kept confidential, and shall be maintained as medical records in accordance with applicable laws, rules and regulations governing the storage of such records. All personal information shall be kept confidential and shall be maintained in accordance with applicable laws, rules and regulations governing the storage of such records.

6. THE LICENSEE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT AS TO ANY MATTER WHATSOEVER, INCLUDING RELATING TO THE CONDITION OF THE COVID-19 TEST OR ITS MERCHANTABILITY, ITS DESIGN, ITS CAPACITY, ITS ACCURACY, ITS PERFORMANCE, ITS MATERIAL, ITS WORKMANSHIP OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.

7. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of New York. In addition, the Parties agree that any cause of action arising out of this Agreement will be brought in the County of Westchester.

8. The District shall not be responsible for the Licensee's property. The District shall not be responsible for accepting the delivery of property addressed to the Licensee. The District shall not be deemed to be a bailee of the Licensee's property.

9. Neither Party nor any of its officers, employees, agents, contractors, subcontractors and/or consultants will hold themselves out as, or claim to be, officers or employees of the other Party or any department, agency or unit thereof.

10. Nothing in the Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. The Agreement will not constitute, create or be interpreted as a joint venture, partnership, or formal business organization of any kind.

11. This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

12. Notwithstanding anything herein to the contrary, neither Party, nor its officers, employees, agents or representatives shall be liable to the other Party for consequential, incidental, indirect, special or punitive damages arising out of this Agreement.

13. Invalidation of any one of the provisions of this Agreement by judgment or court order shall not affect the validity of any other provision, which shall remain in full force and effect.

14. Each Party represents and warrants that the person executing this Agreement on its behalf is fully authorized to execute this Agreement.

[Signature to Follow]

IN WITNESS WHEREOF, the County caused this instrument to signed by its duly authorized officer and the District has caused this instrument to be executed by its duly authorized officer in counterparts.

LICENSEE

By: _____

Name: _____

Title: _____

DISTRICT

By: _____

Name: _____

Title: _____