

# COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



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|   |  |  |                            |
|---|--|--|----------------------------|
| <b>CONTRACTOR LEGAL NAME:</b> COLOR GENOMICS INC  |  | <b>COMMONWEALTH DEPARTMENT NAME:</b> Department of Public Health   |                            |
| <b>Legal Address: (W-9, W-4):</b><br>831 MITTEN RD STE 100 BURLINGAME, CA 94010-1300  |  | <b>MMARS Department Code:</b> DPH  |                            |
| <b>Contract Manager:</b> Caroline Savello   |  | <b>Business Mailing Address:</b><br>305 South Street, Jamaica Plain, MA 02130  |                            |
| <b>Phone:</b> 650-524-5012  | <b>Billing Address (if different):</b> |  |                            |
| <b>E-Mail:</b> caroline@color.com   | <b>Fax:</b>                            | <b>Contract Manager:</b> Eva Beurs   | <b>Phone:</b> 617-983-6225 |
| <b>Contractor Vendor Code:</b> VC0001194695   | <b>E-Mail:</b> Eva Beurs@mass.gov      | <b>Fax:</b>  |                            |
| <b>Vendor Code Address ID (e.g. "AD001"):</b> AD 001<br>(Note: The Address ID must be set up for EFT payments.)   |  | <b>MMARS Doc ID(s):</b> INTF5216U11W21135048   |                            |
| <input checked="" type="checkbox"/> <b>NEW CONTRACT</b>   |  | <input type="checkbox"/> <b>CONTRACT AMENDMENT</b>   |                            |
| <b>PROCUREMENT OR EXCEPTION TYPE: (Check one option only)</b><br><input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department)<br><input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget)<br><input type="checkbox"/> Department Procurement (includes all grants §15 CMR 2.00) (Solicitation Notice or RFR, and Response or other procurement supporting documentation)<br><input checked="" type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget)<br><input type="checkbox"/> Contract Employee (Attach Employment Status Form, scope, budget)<br><input type="checkbox"/> Other Procurement Exception: (Attach authorizing language, legislation with specific exemption or earmark, and exception justification, scope and budget)   |  | Enter Current Contract End Date Prior to _____, 20____<br>Amendment: Enter Amendment Amount: \$_____. (or "no change")<br><b>AMENDMENT TYPE: (Check one option only. Attach details of Amendment changes.)</b><br><input type="checkbox"/> Amendment to Scope or Budget (Attach updated scope and budget)<br><input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated scope/budget)<br><input type="checkbox"/> Contract Employee (Attach any updates to scope or budget)<br><input type="checkbox"/> Other Procurement Exception (Attach authorizing language/justification and updated scope and budget) |                            |
| The Standard Contract Form Instructions, Contractor Certifications and the following Commonwealth Terms and Conditions document is incorporated by reference into this Contract and are legally binding: (Check ONE option): <input type="checkbox"/> Commonwealth Terms and Conditions <input type="checkbox"/> Commonwealth Terms and Conditions For Human and Social Services <input checked="" type="checkbox"/> Commonwealth IT Terms and Conditions   |  |  |                            |
| <b>COMPENSATION: (Check ONE option):</b> The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00.<br><input checked="" type="checkbox"/> <b>Rate Contract</b> (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)<br><input type="checkbox"/> <b>Maximum Obligation Contract</b> Enter Total Maximum Obligation for total duration of this Contract (or new Total if Contract is being amended): \$_____  |  |  |                            |
| <b>PROMPT PAYMENT DISCOUNTS (PPD):</b> Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days _____ % PPD; Payment issued within 15 days _____ % PPD; Payment issued within 20 days _____ % PPD; Payment issued within 30 days _____ % PPD. If PPD percentages are left blank, identify reason: <input checked="" type="checkbox"/> agree to standard 45 day cycle <input type="checkbox"/> statutory/legal or Ready Payments (G.L. c. 29, § 23A); <input type="checkbox"/> only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)   |  |  |                            |
| <b>BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT:</b> (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.)<br>Information Technology (IT) Vendor Services Vaccination Distribution Technology (VDT) Services   |  |  |                            |
| <b>ANTICIPATED START DATE:</b> (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:<br><input type="checkbox"/> 1. may be incurred as of the Effective Date (latest signature date below) and no obligations have been incurred prior to the Effective Date.<br><input checked="" type="checkbox"/> 2. may be incurred as of 02/17/2021, a date LATER than the Effective Date below and no obligations have been incurred prior to the Effective Date.<br><input type="checkbox"/> 3. were incurred as of _____, 20____, a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.  |  |  |                            |
| <b>CONTRACT END DATE:</b> Contract performance shall terminate as of 02/17/2022, with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.   |  |  |                            |
| <b>CERTIFICATIONS:</b> Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, this Standard Contract Form, the Standard Contract Form Instructions, Contractor Certifications, the applicable Commonwealth Terms and Conditions, the Request for Response (RFR) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract. |  |  |                            |
| <b>AUTHORIZING SIGNATURE FOR THE CONTRACTOR:</b><br>X: <u>Caroline Savello</u> Date: <u>17 Feb. 2021</u><br>(Signature and Date Must Be Handwritten At Time of Signature)<br>Print Name: <u>Caroline Savello</u><br>Print Title: <u>Chief Commercial Officer</u>  |  | <b>AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:</b><br>X: <u>Diana Mustace</u> Date: <u>02/17/2021</u><br>(Signature and Date Must Be Handwritten At Time of Signature)<br>Print Name: <u>Diana Mustace</u><br>Print Title: <u>Director, Purchase of Service Office</u>   |                            |

## Scope of Services

This Attachment Form must be used. Please check the appropriate box when processing a new contract or a contract amendment.

Contract ID #:

**Any funds designated in the budget that are unspent in any fiscal year will not be available for expenditure in the subsequent fiscal year without a formal contract amendment re-authorizing these funds.**

☐

### **New Contract**

This form will only be included with packages where a procurement exception (waiver) supports the contract.

Identify in detail the scope of services in terms of performance for a new contract. Services provided must be in accordance with the budget and the terms and conditions of the federal grant (if applicable).

☐

### **Contract Amendment**

**If choosing amendment you must check off one of the three types below and provide explanation**

☐

#### **Increase**

Include a clear explanation of what the funding change will support in terms of additional services.

☐

#### **Decrease**

Include a clear explanation of what services are being reduced as a result of the funding decrease.

☐

#### **Other**

Identify the changes to the scope of services supported by the amendment (No change in Max Obligation).

**Scope of Work**  
**The Massachusetts Department of Public Health**  
**And**  
**Color Health, Inc. (f/k/a Color Genomics, Inc.)**  
**For**  
**Vaccine Distribution Technology Services**

**Contract ID: INTF5216U11W21135048**

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This Vaccine Distribution Technology Services Contract is by and between the Massachusetts Department of Public Health (“**DPH**”) and Color Health, Inc. (“**Contractor**”).

**WHEREAS**, DPH is a public agency with legal responsibility and authority for responding to the COVID-19 pandemic in the Commonwealth;

**WHEREAS**, in response to the COVID-19 emergency, DPH seeks to increase access to and manage distribution of COVID-19 vaccinations across Massachusetts (the “**Vaccine Program**”);

**WHEREAS**, Contractor has agreed to provide such services in accordance with the following terms and conditions;

**WHEREAS**, DPH and Contractor agree to enter into the Contract effective upon execution; and

**NOW THEREFORE**, in consideration of the mutual promises herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**SECTION I. DEFINITIONS**

The following terms appearing capitalized throughout this Contract and its appendices have the following meanings, unless the context clearly indicates otherwise.

**Vaccine Distribution Technology or VDT Services:** Those certain technology-related services in support of the Vaccine Program, as further described in **Section II(A)**. For the avoidance of doubt, such services expressly exclude any medical or clinical services, such as the provision of any vaccine doses.

**COVID-19:** A contagious, sometimes fatal, respiratory disease caused by a newly discovered coronavirus, SARS-CoV-2, that led to the declaration of a federal public health emergency and a state of emergency for the Commonwealth of Massachusetts.

**Department of Public Health (DPH or the Department):** A constituent agency of EOHHS responsible for public health, pursuant to G.L. cc. 17 and 111, and other applicable laws.

**Effective Date:** The date this Contract is effective, which is the date of the last signature on the Standard Contract form.

**Executive Office of Health and Human Services (EOHHS):** A secretariat-level executive agency under the Governor of Massachusetts. EOHHS oversees 12 constituent agencies, including DPH, in addition to 2 soldiers' homes and the MassHealth program.

**ICF:** An informed consent form which (i) provides enough information to the individual about the relevant vaccine to allow the individual to provide their informed consent to the vaccination, and (ii) as signed, documents the user's consent to the applicable vaccination, in form and content provided by DPH.

**MIIS:** The Massachusetts Immunization Information System, a confidential web-based vaccine registry maintained by the Massachusetts Department of Public Health.

**HIPAA:** The Health Insurance Portability and Accountability Act Rules (inclusive of 45 CFR Parts 160, 162, and 164), as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act") and under the American Recovery and Reinvestment Act of 2009 ("ARRA").

**PII:** Any "protected health information" as defined under HIPAA, any "personal data" as defined in M.G.L. c. 66A, and "personal information" as defined in M.G.L. c. 93H, and any other individually identifiable information that is treated as private, security, or confidential under applicable law, agreement, pursuant to **Section II.2.c**, that Contractor uses, maintains, discloses, receives, creates, transmits or otherwise obtains in connection with its performance of the SCT Services. Information, including aggregate information, is considered PII if it is not fully de-identified in accord with 45 CFR §§164.514(a)-(c).

**Commonwealth Site:** the entity permitted by the Department to use the VDT Services, as further set forth in Appendix I to this Contract.

**Vaccination Site:** A physical location, including any clinic, mobile vaccination clinic, or drive-up, drive-through or at-home residential setting, managed, controlled, or administered by a Commonwealth Site as part of the Vaccine Program where members of the public may receive COVID-19 vaccines in the Commonwealth.

**Official User:** DPH, any other agency or department within EOHHS, Commonwealth Site, Vaccination Site, and any respective contractors or agents thereof, as well as local boards of health or other municipal entities, using the VDT Services to support the Vaccine Program.

**Public User:** An individual member of the general public receiving a vaccine at a Commonwealth Site or a Vaccination Site, as applicable, including those individuals using the VDT Platform Services to schedule and manage vaccination appointments for themselves or for another member of the general public (e.g., use of the VDT Platform Services to help schedule a vaccination appointment for a family member or friend).

**User:** Any Official User or Public User.

## **SECTION II. CONTRACTOR RESPONSIBILITIES**

Contractor shall perform the "VDT Services", which consists of the following services:

**A. VDT Platform Services.** Contractor shall provide an online, digital interface that includes such functionalities set forth below and in **Appendix P** and related services (as further described below) to:

1. Collect the following self-attested information from the Public User: required PII (including demographics), insurance information, and the Public User's eligibility for the Vaccine Program, via a questionnaire or other content drafted by Contractor to be approved by DPH no later than the Effective Date. To the extent further changes are needed to the content of VDT Platform Services, DPH may request such changes to be implemented by Contractor which, if such changes consist solely of updating existing fields (as set forth in **Appendix F**) or text associated with existing functionalities, shall be free of charge.
  - i. Contractor shall translate the Public User facing registration platform and related content (such as SMS messages and emails provided to Public Users) into 3 languages: Spanish, Simplified Chinese, and Portuguese. Spanish language translation shall be completed and approved no later than Feb. 18, 2021.
  - ii. Registration flow will collect insurance information from individual.
  - iii. If additional language translations are required, including but not limited to updates to custom DPH or Vaccination Site content in the VDT Platform Services or additional languages in the VDT Platform Services, DPH and Contractor will mutually agree on additional custom development costs. Translation costs for all languages shall be as set forth in **Section IV**. Additionally, to the extent content needs to change per DPH or the Vaccination Site, Contractor shall update such content, including any translations, within 5 business days of the request from DPH, or if an urgent or priority request, including as a result of a security incident, such lessor time as mutually agreed.
  - iv. Additional features include: On-the-spot (day-of, onsite) registration (to be added post-launch); pre-vaccination checklist completed by registrant; ability for authorized individuals to register on behalf of other individuals (e.g., minors or those under guardianship)
2. At the direction of DPH, collect a list of Public Users not yet eligible for the Vaccine Program, and send reminder texts or emails to said Public Users when based on the information provided by the Public User they may be eligible to sign up for their first appointment, subject to appropriate individual consent to receive communications. Such reminder texts, emails, and the consent notice (collectively "**Communications with the Public**"), shall be drafted by the Contractor, to be reviewed and approved by DPH prior to the Communications with the Public being used as part of the VDT Platform Services. Such Communications with the Public will be sent to individuals at a frequency to be determined by DPH.

3. Collect and record the Public User's consent to the applicable ICF. ICF will be designated by DPH and apply to all Vaccination Sites within the Vaccine Program, at the direction of DPH.
4. Provide the following Vaccination Site services: (a) register Vaccination Sites, Commonwealth Sites, or related organizations, including but not limited to the site address and point of contact, (b) permit individuals to schedule, reschedule, and cancel vaccination appointments with such sites via a web-based interface based on availability as reported by the site, (c) record the administration of the vaccine to an individual, including, but not limited to the date and location the vaccine was administered and in accordance with Massachusetts Covid Vaccine Program (MCVP) (as provided by DPH to Contractor) and in accordance with 105 CMR 222 and other applicable law (d) deliver within twenty-four (24) hours, or as otherwise may be required by applicable law, required individual vaccination information to MIIS in a manner that is materially compliant with the MIIS HL7 Transfer Specifications, Version 20.3, dated October 19, 2020.
  - i. Registered Public Users will receive reminders of their upcoming appointments by SMS and/or email.
5. VDT Platform Services will include the following functionalities for both, first and second doses, of a given vaccine:
  - i. Sites will be able to accomplish the following by emailing a support request form to Contractor beginning on as of the Effective Date prior to the availability of a self-service interface in accordance with the following: Contractor must accommodate all material support requests within 1 hour of request submission during site's operating hours and within 4 hours of request submission during non-operating hours. Non-material requests (e.g., creating schedules weeks in advance that will not be public-facing within the following 48 hours) will be completed within a reasonable timeframe. Sites will be able to accomplish the following via a self-service interface (at such dates as set forth in **Appendix P**):
    1. Ability to set variable schedule times, appointment windows, and capacity per window (subject to each site providing accurate information about their capacity and scheduling).
    2. Ability to create blocks of reserved appointment capacity for specific use cases, such as priority populations, phone-based registration.
    3. Ability to provision and permission Official Users for different Entitlements in their Vaccination Site, such process to take no longer than five minutes.
  - ii. Inventory tracking software to manage daily total vaccines available, administered, and wasted, by manufacturer, batch, lot, expiration date and

dose.

- iii. Ability to record the vaccine was administered with individual check-out functionality to be added if needed post-launch, as directed by DPH.
  - iv. Contractor will implement two-factor authorization or comparable additional security measures for all Official User 'Management Accounts' and permissioning (or equivalent Entitlement) within the VDT Platform Services by April 2, 2021.
6. Provide digital proof, in a digital form to be agreed to by the parties, of immunization to Public Users who receive a vaccine dose through the Vaccine Program. Contractor shall develop functionality within the VDT Platform Services within 60 days of the Effective Date to allow Public Users to access and print, download or otherwise export the digital proof of such Public User's vaccination on their own. Within two (2) months prior to the expiration of this Contract, or commencing immediately upon notice of termination of this Contract, or any amendments under this Contract, Contractor will provide to DPH, or its designee, such termination assistance services as DPH deems required to facilitate orderly migration and transfer of all data related to the digital proof of immunization. All such services reasonably requested by DPH in writing shall be performed by Contractor.
7. Provide the following reports to DPH and, with direction from DPH, Vaccination Sites and Commonwealth Sites (as applicable) with permissions appropriate to their Official Users:
- i. Real-time dashboard of key metrics of the Vaccine Program using PII provided by Users and other data provided by Vaccination Sites to Contractor via the VDT Platform Services, such as:
    - 1. Number of appointments scheduled, total and by day and by hour, broken out by Vaccination Sites and Commonwealth Sites (as applicable)
    - 2. Number of appointments missed (no-shows), total and by day, by individual Vaccination Sites and Commonwealth Sites (as applicable)
    - 3. Number of vaccine doses administered by manufacturer and dosage, total and by day, by dose type (first, second) by individual Vaccination Sites and Commonwealth Sites (as applicable)
    - 4. Demographic breakdowns of vaccinated population, by ethnicity, age, and zip code by individual Vaccination Sites and Commonwealth Sites (as applicable)
  - ii. All reports to support data extraction via dashboard or automated daily

data feeds to be provided to DPH on a daily basis via a method to be determined by the parties in writing.

8. Collect and transmit insurance information provided by Public Users and Official Users to DPH's single designated third-party billing service by an automated daily feed, or as otherwise directed by DPH. If DPH requires additional data feeds to be set up for other billing services, such work shall be considered as VDT Configuration Services in accordance with **Section II.C** and subject to the fees for the VDT Data Feed Services set forth in **Section IV**.
9. Collect, evaluate, and respond to requests from Public Users for a copy of their information held within the VDT Platform Services. Such requests shall be made on a written authorization form developed by Contractor, the elements of which shall comply with the requirements set forth in 45 CFR § 164.508. Such requests shall be evaluated and responded to as though made pursuant to 45 CFR § 164.524. Contractor shall keep a log of all such requests and its responses thereto. Contractor shall provide such log to DPH upon DPH's request.
10. Collect, evaluate, and respond to requests from Public Users for a copy of the audit trail associated with their information held within the VDT Platform Services. Such requests shall be made on a written authorization form developed by Contractor, the elements of which shall comply with the requirements set forth in 45 CFR § 164.508. Contractor shall keep a log of all such requests and its responses thereto. Contractor shall provide such log to DPH upon DPH's request.
11. Contractor shall allow, and hereby grants DPH (for itself and EOHHS), permission to obtain and make available data and information regarding vaccine appointment availability contained within the VDT Platform Services ("**Vaccine Provider Data**") to certain user "front end" interfaces and related technology platforms used to check the availability of appointments to receive COVID-19 vaccines in the Commonwealth, including, without limitation the COVID-19 Project Beacon Scraper Platform and such other platforms or tools as may be mutually agreed by the parties in writing (including email). Custom integrations or API creation for these "front end" interfaces and related technology platforms will be charged additionally as VDT Configuration Services in accordance with **Section II.C**.
12. Contractor shall not be liable for breach of this Contract or otherwise liable for any failure of the VDT Platform Services to function as described herein to the extent such failure is caused by DPH or any Official User's failure to use the VDT Platform Services in accordance with Contractor's instructions as set forth in the applicable terms of this Contract. To the extent DPH or any Official Users are required to agree to any 'click' terms of use or privacy policies that are in conflict with the terms of this Contract, the terms of this Contract shall supersede and govern. DPH shall not be responsible for any Public User's use of the VDT Platform Services. Use of the VDT Platform Services by Public Users will be governed by the Contractor's terms of use and privacy policy accepted or



otherwise acknowledged by the Public Users, provided that to the extent any such Public User Terms are inconsistent with Contractor's obligations under this Contract, the obligations as set forth in this Contract shall apply to such Public Users ("**Public User Terms**"). DPH shall not be a party to the Public User Terms and nothing in the Public User Terms shall contravene any applicable law.

13. Support the following audit capabilities: with respect to User access logs, maintain such logs for at least six (6) years and the capability should be, minimally, sufficient for compliance with 45 CFR 164.312(b), and enable DPH access and searchability to such logs. Upon termination of the Contract, additional terms to be agreed upon between the parties shall be consistent with **Section VI.2.B of Exhibit BAA**.
14. An unlimited number of Users shall be allowed to use the VDT Platform Services and Users will be provisioned with accounts and usage privileges according to their role and respective Entitlements:
  - i. Official Users will be able to use the VDT Platform Services for all of the functionalities described herein according to their role as described in **Appendix E** for "discrete user roles" functionality and, including, without limitation vaccine clinic administration, subject to the Entitlements applicable for any such Official User.
    1. The VDT Platform Services shall include the ability to provision and segregate Official Users by individual and multiple categories and utilizing various attributes, including but not limited role, title, position, function, organization, Vaccination Site, and Commonwealth Site, to manage and administer read-only, administrator, and 'super-user' user-based credentials for each category (the "**Entitlements**"). Initial Official User Entitlements are set forth in **Appendix E**.
  - ii. Public Users will be able to perform the following functions on the VDT Platform Services: Register for vaccination, schedule first and second dose appointment, access digital proof of immunization, and reach technical and customer support.

15. The VDT Platform Services shall comply with the requirements of **Appendices E, I, F, P and S**.

16. The VDT Platform Services shall be available as set forth in the following service level agreement ("**SLA**"):

### **Service Level Agreement**

**1. Definitions.** For purposes of this Service Level Agreement, the following terms shall have the following meanings:

a. “*Downtime*” means any period, greater than ten minutes, within the Scheduled Available Time during which DPH is unable to access or use Services because of an Error, excluding any such period that occurs during any Scheduled Downtime or due to events beyond Contractor’s reasonable control, including without limitation: (a) civil commotion, riot, terrorism, invasion, war or preparation for war; (b) fire, explosion, storm, flood, earthquake, subsidence, or other natural physical disaster; (c) unavailability of the use of railways, shipping, aircraft, motor transport, or any other means of public or private transport; or (d) public unavailability of internet connectivity to end users (“**Force Majeure Event**”). Contractor must give DPH notice as soon as possible upon the commencement and conclusion of a Force Majeure Event. Notwithstanding the foregoing or anything to the contrary set forth in this Contract, a Force Majeure Even shall not excuse, delay or suspend Contractor’s obligations to invoke and follow a business continuity plan or any other business continuity or Disaster Recovery obligations in a timely fashion.”.

If unavailability occurs due to events beyond Contractor’s reasonable control, Contractor shall take commercially reasonable efforts to minimize such unavailability and address it to the extent possible without interruptions to the Services.

b. “*Error(s)*” means the material failure of the Services to work as designed and/or conform to their agreed-upon functional specifications pursuant to the Contract or as otherwise agreed to by the parties, as reported or documented in writing (or electronically).

c. “*Scheduled Available Time*” means 24 hours a day, 7 days a week.

d. “*Scheduled Downtime*” means the time period identified by Contractor in which it intends to perform any planned upgrades and/or maintenance on its Services or related systems and any overrun beyond the planned completion time. Contractor shall plan Scheduled Downtime to only take place between 8:00 p.m. and 9:00 a.m. prevailing eastern time unless there is a technical necessity to conduct Scheduled Downtime in other times after exhausting alternative options. Such Scheduled Downtime shall not exceed 2.5 hours per calendar month.

e. “*Services*” means the VDT Platform Services, if any, to be provided by Contractor as contemplated under this Contract.

f. “*Uptime Percentage*” means the total number of minutes of Scheduled Available Time for a calendar month minus the number of minutes of Downtime suffered in such calendar month, divided by the total number of minutes of Scheduled Available Time in such calendar month.

**2. Scheduled Downtime and Guaranteed Uptime Percentage.** Contractor will provide at least one (1) week of notice to DPH’s designated contact for such notice before implementing any Scheduled Downtime.

The Uptime Percentage shall be 99.50% or greater. In the event that Contractor fails to meet the 99.50% Uptime Percentage Service Level Agreement (SLA) in any calendar month during the Term, DPH’s remedies shall be as follows:

| <b>Uptime Percentage</b> | <b>Service Level Credit (% of Monthly Pro-Rated Amount of the VDT Platform Service Annual Fee)</b> |
|--------------------------|--|
| 99.50% and above         | No Credit  |
| Between 99% and 99.49%   | 5%   |
| between 98% and 98.99%   | 10%  |
| between 97% and 97.99%   | 20%  |
| Less than 97%            | 35%  |

If DPH has a good faith belief that uptime percentages have not been met, Contractor shall within a commercially reasonable time provide reasonably required reports to DPH, via email or as otherwise agreed to by the parties, of its Uptime Percentage for such period of time.

17. Contractor will provide technical support for the VDT Platform Services according to the following terms:

*Technical Support Terms*

**Overview:** The VDT Platform Services technical support services described herein are provided by Contractor to DPH.

**1. VDT Platform Services technical support** services consist of the following:

**1.1 Error Corrections.** Contractor shall use commercially reasonable efforts to correct and/or provide a work-around for any error reported by DPH in the VDT Platform Services in accordance with the priority level reasonably assigned to such error by DPH.

**1.2 VDT Platform Services and Documentation Updates.** Contractor shall provide to DPH any generally released bug fixes, maintenance releases and updates of the VDT Platform Services (collectively, “**Updates**”). Updates do not include products or options that are designated by Contractor as new products or options or functionalities for which Contractor charges a separate fee and which is not a component of the VDT Platform Services set forth herein.

**1.3 Support Requests and Named Support Contacts.** DPH may initiate support requests by [vaccine@color.com](mailto:vaccine@color.com) and by contacting Contractor’s team of account leads, including Mary Mei, by email or over the phone.

**1.4 Additional Support.** In addition to the above, DPH shall receive support from the Product Manager at Contractor, and Contractor shall provide assistance for Priority I errors, as reasonably determined by Contractor, 24x7, 365 days per year. However, DPH shall have the right to reasonably re-classify the priority of any misclassified error. Handling of non-Priority I errors will take place during 8AM to 6PM PT (11AM to 9PM ET).

## **2. Priority Levels of Errors and Responses**

In the performance of technical support services, Contractor will apply the following priority ratings:

### **2.1 Priority I Errors.**

A “Priority I Error” means a VDT Platform Services program error which both (i) prevents some critical function or process from substantially meeting the specifications and (ii) seriously degrades the overall performance of such function or process such that no useful work can be done and/or some primary major function of the VDT Platform Services is disabled. Priority I Errors shall receive an initial response within four (4) hours (during standard support hours referenced above), of the case being submitted to Contractor. In addressing a Priority I Error, Contractor shall use commercially reasonable efforts to develop suitable workaround, patch, or other temporary correction to restore operation as soon as possible. Contractor efforts to resolve a Priority 1 Error will include the following: (1) assigning one or more engineers on a dedicated basis to develop suitable workaround, patch, or other temporary correction; (2) notifying senior Contractor management that such Priority 1 Error has been reported; (3) providing DPH with periodic reports on the status of corrections; and (4) providing a final solution to DPH as soon as it is available.

### **2.2 Priority II Errors.**

A “Priority II Error” means a VDT Platform Services program error which both (i) degrades some critical function or process from substantially meeting the specification and (ii) degrades the overall performance of such function or process such that useful work is hindered and/or some major function of the VDT Platform Services is not operating as expected but can be worked-around. Priority II Errors shall receive an initial response within eight (8) hours (during standard support hours referenced above). Contractor shall use commercially reasonable efforts to provide a workaround, patch, or other temporary correction as soon as possible.

### **2.3 Priority III Errors.**

A “Priority III Error” means a VDT Platform Services program error which both (i) prevents some non-essential function or process from substantially meeting the Documentation and (ii) significantly degrades the overall performance of the VDT Platform Services. Priority III Errors shall receive an initial response within twelve (12) hours (during standard Support hours referenced above). Contractor shall use commercially reasonable efforts to provide a workaround, patch, or other temporary correction as soon as possible.

### **2.4 Priority IV Errors.**

A “Priority IV Error” means a VDT Platform Services program error which prevents some function or process from substantially meeting the specifications but does not significantly degrade

the overall performance of the VDT Platform Services. Priority IV Errors shall receive an initial response within sixteen (16) hours (during standard support hours referenced above). Contractor shall use all reasonable efforts to include a workaround, patch, or other temporary correction in the next VDT Platform Services update.

### **3 DPH Cooperation.**

Contractor's obligation to provide technical support services is conditioned upon the following: (i) DPH's commercially reasonable effort to resolve the problem after communication with Contractor; and (ii) DPH's commercially reasonable cooperation with Contractor to resolve the Error, including without limitation provision to Contractor of sufficient information and cooperation to identify (and, to extent necessary, to correct the problem), and remote access as further discussed in these policies.

### **4. Technical Support Conditions.**

**4.1 Support Issues Not Attributable to Contractor.** Contractor is not obligated to provide Technical support services for problems related to: (i) unauthorized modifications and/or alterations of the VDT Platform Services, (ii) improper installation of the VDT Platform Services by non-Contractor personnel, use of the VDT Platform Services on a platform or hardware configuration other than those specified in the Documentation or in a manner not specified in the Documentation, or (iii) problems caused by the DPH's negligence, hardware malfunction, or third-party VDT Platform Services.

**B. VDT Support Services.** Contractor shall provide the following additional VDT Services in support of DPH and the Users (the "**VDT Support Services**"):

#### **1. VDT Call Center Services:**

(a) Public Users and Individual Support. At the direction of DPH, provide phone and email-based customer support for Public Users and individuals seeking and receiving vaccinations 7 days per week, 9AM to 6PM ET, and respond to Public User and individual requests within a reasonable turnaround time based on the nature and complexity of the customer request, in support of technical assistance and troubleshooting for Public Users and individuals while using the VDT Platform Services. VDT Call Center Services for Public Users and individuals will be provided via triage from other DPH, EOHHS, or Vaccination Site call center services.

(b) Official Users Support. VDT Call Center Services for Official Users shall include phone and email-based administrator and technical support for Official Users for all Entitlements, including without limitation, for all Official Users operating the VDT Platform Services and requiring technical assistance, training, and troubleshooting, 7 days per week, 7:30AM to 6PM ET, and respond to requests within one (1) hour if technical issue prevents an Official User from completing vaccine administration, within 24 hours if an urgent request, and with reasonable turnaround time based on the nature and complexity of the request otherwise. Contractor will make reasonable commercial efforts to report and escalate any technical issues and troubleshooting for an Official User that are preventing vaccine administration from occurring that cannot be resolved within the same business day.

Additionally, Contractor shall provide support services to Official Users that are ‘site operators’ (or the equivalent Entitlement), including:

- i. Email- and phone-based technical troubleshooting
- ii. Reasonable training support for site operators and staff (not to exceed 3 hours / week after launch)

**2. VDT On-Site Support Services.** As requested by DPH, provide training of Vaccination Site, Commonwealth Site, or related organization, staff or provide in-person consulting or support services on site in a commercially reasonable, professional, and workmanlike manner.

3. DPH understands and agrees that: (i) Contractor does not practice medicine, provide medical treatment, or medical advice, and is not providing any medical services pursuant to this Contract, and (ii) any information or advice regarding the vaccine provided by Contractor’s support staff shall be limited to only that complete, accurate information provided by DPH to Contractor for purposes of forwarding to Public Users.

**C. VDT Configuration Services.** If DPH requests any configuration of the VDT Services (except as already contemplated by **Appendix P**), Contractor will consider such requests in good faith and the parties shall mutually agree in writing on any configuration work to be performed via an amendment to this Contract or a separate Contract under terms as mutually agreed by the parties.

**D. VDT Data Feeds Services.** Provision of custom data feeds to other DPH-designated entities as directed by DPH and subject to applicable data privacy law (e.g. HIPAA) upon mutual written agreement of the parties (including email), as well as integration with DPH third party billing services.

**E. Miscellaneous.**

1. As requested by DPH and with reasonable notice, participate in meetings with DPH at which DPH and Contractor may discuss the services rendered under this Contract, Contractor’s performance of the terms of this Contract, or any other item related to the Contract.
2. Comply with all state and federal laws and regulations applicable to the privacy and security of personal and other confidential information related requirements, including a HIPAA-compliant electronic recordkeeping system.
3. All reports required under this **Section II** shall be sent via secure HIPAA-compliant email to an individual designated by DPH or access can be provided to a secure database providing the information contained in the required reports, as agreed to by the parties in writing.
4. Contractor’s provision of the VDT Services shall comply with all data privacy and security provisions pursuant to this Contract, including as set forth in **Exhibit BAA** (Business Associate and Confidentiality Agreement).

- Any audit or inspection of records conducted under this Contract shall limit the disclosure of PHI to the “minimum necessary” as reasonably determined by DPH for the audit or inspection, as contemplated under HIPAA, and such audit or inspection shall be conducted during normal business hours without unreasonable disruption to Contractor’s business operations, except in the event of a problem where the severity of such problem required such response be immediate and may be required outside of Contractor’s normal business operations.

### SECTION III. DPH RESPONSIBILITIES

DPH shall:

- Provide general assistance to Contractor in working with the Vaccination Sites, Commonwealth Sites, or organizations to understand product and support needs of Vaccination Sites and to prioritize requests regarding any changes or additional features to the VDT Platform Services from Vaccination Sites as well as verify Official User ‘Site Administrators’ (or similar Entitlement category for the highest Official User Entitlement at each Vaccination Site or Commonwealth Site, as applicable);
- Provide complete, accurate forms of ICFs, HIPAA authorizations, and any other information or disclosures (e.g. vaccine information) to be hosted on Contractor’s VDT Platform Services;
- Meet with Contractor to discuss the services rendered under this Contract, Contractor’s performance of the terms of this Contract, or any other item related to the Contract, as determined necessary or advisable by DPH; and
- Pay Contractor in accordance with **Section IV** for the VDT Services performed.

### SECTION IV. PAYMENT

- DPH shall pay Contractor in accordance with DPH’s bill paying policy. (Commonwealth of Massachusetts, Office of the Comptroller, Bill Paying Policy and General Payment Policies, last revised May 19, 2011).
- Subject to all terms and conditions of the Contract, the total amount paid by DPH for the VDT Services will be the sum of the fees for the VDT Platform Services, VDT On-Site Support Services, VDT Call Center Services, VDT Configuration Services and VDT Data Feeds Services, as described below:

|  |   |
|--|---|
| <p><b>VDT Platform<br/>Services Annual<br/>Fee</b></p> | <p>For VDT Platform Services (including, without limitation, the functionalities set forth in <b>Appendix P</b>):</p> <p>During the Initial Term: \$320,000 annually (based on Term year), invoiced following the Effective Date and payable in accordance with</p> |
|--|---|

|                                     |  |
|-------------------------------------|--|
|                                     | <p>Section 2 (Payments and Compensation) of Commonwealth Terms and Conditions for Information Technology Contracts.</p> <p>During any Renewal Term: as set out in <b>Section V.1</b> below, invoiced following the applicable anniversary of the Effective Date.</p> <p>Translation fees will be passed through at cost + 20% administration fee for such translation work as mutually agreed in writing by the parties.</p>   |
| <b>VDT On-Site Support Services</b> | <p>\$1,200 / day, consisting of 10 hours including travel time, rate per Contractor 'Site Operations individual' onsite to support training events and troubleshooting with Vaccine Sites or Commonwealth Sites, as applicable. DPH will request VDT On-Site Support Services with 72 hours' notice.</p>   |
| <b>VDT Call Center Services</b>     | <p>Call Center Support for Official Users, Public Users, and Individuals: \$24,000 one-time service initiation cost (for training, creating program materials, FAQ lists, support scripts), invoiced following Month 1</p> <p>Month 1: Pass-through costs of \$72/hour of support team time (based % of total call/email volume at Contractor's support center), invoiced each calendar month in arrears (pro-rated based on calendar month)</p> <p>Contractor to provide monthly report including, at minimum, the following metrics: total number of calls during calendar month, the number of calls per day within the calendar month, % Massachusetts calls, % time spent on technical inquiries, % time spent on non-technical inquiries.</p> <p>After Month 1: Both parties mutually agree that there will be a written agreement, that will be incorporated by reference and become a part of this Contract upon finalization, that will include a reasonable fixed monthly fee by call/email volume tier, invoiced each calendar month in</p> |



|                                   |   |
|-----------------------------------|---|
|                                   | arrears (pro rated based on calendar month).  |
| <b>VDT Configuration Services</b> | A blended rate of \$130 per hour of VDT Configuration Services provided   |
| <b>VDT Data Feed Services</b>     | <p>\$18,000 per integration of data feed or third-party billing service (as applicable) + \$500 per month per integration maintenance fee</p> <p><i>Note: Contractor is waiving data feed cost (integration and monthly maintenance fees) for insurance billing integration with DPH's first designated third party billing service, unless such integration requires additional configuration or updates as may be mutually agreed by the parties.</i></p> |

3. Invoices shall include, at a minimum, the following information, as well as such other information as reasonably requested by DPH to comply with its invoicing and auditing requirements: date, dates of service and related service type, accurately setting forth the number of hours of VDT Call Center Services and VDT Configuration Services performed by appropriately qualified personnel and related metrics (set forth in this **Section IV**), Contractor's name, encumbrance number and invoice amount. Contractor will use best efforts and work cooperatively to submit its invoices for payment in the requested format.
4. The total Not-to-Exceed amount for the VDT Services for the Term shall be: \$1,250,000.
5. Payments made by DPH in the correct amounts on invoices that conform to the requirements of this Contract shall be considered payment in full for Services.
6. Payment will be made in accordance with this Contract, including the Standard Contract Form and the Commonwealth Terms and Conditions, and other applicable Commonwealth payment terms.
7. Payment is contingent on Contractor's compliance with all conditions and requirements of the Contract. In cases where DPH deems Contractor has not complied with all such conditions and requirements, DPH shall provide written notice of such noncompliance and may provide, at its sole discretion, an opportunity for Contractor to cure or end such noncompliance.

## **SECTION V. OTHER CONTRACTUAL TERMS**

1. The initial term of this Contract is from the Effective Date and shall expire February 17, 2022. The parties may extend this Contract in writing until February 17, 2024, in any increment one month or longer, in each party's sole discretion by written amendment of

this Contract (collectively, with the initial term, the “**Term**”).

2. The entire agreement between the parties consists of the following documents in the following order of precedence: (1) The Commonwealth Terms and Conditions for Information Technology Contracts; (2) the Commonwealth Standard Contract Form; and (3) this Contract any attachments, appendices and exhibits hereto (collectively, the “**Contract**”). There are no additional promises or terms other than as contained in this Contract.
3. The parties agree to negotiate in good faith to cure any omissions, ambiguities, or manifest errors herein. Upon mutual agreement, or if such amendment is necessary to comply with applicable laws, the parties may amend this Contract where such amendment does not violate state or federal statutory, regulatory provisions, provided that such amendment is in writing, signed by both parties, and attached hereto.
4. Notices to the parties as to any matter hereunder will be sufficient if given in writing to the following addresses (or successors as designated by the parties):

**To DPH:**

Tami Segal  
MassHealth  
Executive Office of Health and Human Services  
One Ashburton Place, 11<sup>th</sup> Floor  
Boston, MA 02116  
[tami.segal@state.ma.us](mailto:tami.segal@state.ma.us)

and

Ceci Dunn  
Deputy Director  
Bureau of Infectious Disease and Laboratory Sciences  
Massachusetts Department of Public Health  
305 South Street  
Boston, MA 02130  
[Ceci.Dunn@Mass.Gov](mailto:Ceci.Dunn@Mass.Gov)

With a copy to:

Elizabeth Scurria Morgan  
Acting General Counsel  
Massachusetts Department of Public Health  
250 Washington Street  
Boston, MA 02108  
[elizabeth.scurriamorgan@mass.gov](mailto:elizabeth.scurriamorgan@mass.gov)

**To Contractor:**

Caroline Savello  
Color Health, Inc.  
831 Mitten Rd, Suite 100  
Burlingame, CA 94010  
[caroline@color.com](mailto:caroline@color.com)

With a copy to:  
[Legal-notices@color.com](mailto:Legal-notices@color.com)

5. If any clause or provision of this Contract is in conflict with any state or federal law or regulation, that clause or provision shall be null and void and any such invalidity shall not affect the validity of the remainder of this Contract.
6. Contractor is fully responsible for the performance of its subcontractors. Subcontracts will not relieve or discharge Contractor from any duty, obligation, responsibility or liability arising under this Contract. All subcontracts and other agreements or arrangements for reimbursement will be in writing and will contain terms consistent with all terms and conditions of the Contract. The use of subcontractors shall not cause any additional administrative burden on DPH as a result of the use of multiple entities.
7. DPH shall have the option, at its sole discretion to modify, increase, reduce or terminate any activity related to this Contract whenever, in the judgment of DPH, the goals of the project have been modified or altered in a way that necessitates such changes. In the event that the scope of work or portion thereof must be changed, DPH shall provide written notice of such action to Contractor and the parties shall negotiate in good faith to implement any such changes proposed by DPH.
8. DPH additionally reserves the right, at its sole discretion, to amend the Contract to implement state or federal statutory or regulatory requirements, judicial orders, settlement agreements, or any state or federal initiatives or changes affecting DPH or the Contract. DPH shall provide written notice of such action to Contractor and the parties shall negotiate in good faith to implement any such changes proposed by DPH.
9. Either party may terminate this Contract for material breach, provided that prior to terminating this Contract, the terminating party shall provide the breaching party a reasonably detailed written notice of the breach and a reasonable opportunity, which shall be at least thirty (30) days from the date of the breaching party's receipt of such written notice or such longer time period as may be mutually agreed in writing, to cure or end such breach. In the event the breach is cured or ended prior to the end of such period, the terminating party's termination rights shall cease.

If the use of the VDT Platform Services hereunder has become (either by filing a claim or by receipt of a demand letter setting out an allegation of infringement in reasonable detail, in either case a **"Claim Notice"**), or in Contractor's opinion is imminently likely to become, the subject of any claim of intellectual property infringement, Contractor must

promptly notify DPH and, at Contractor's sole discretion and expense and after consulting in good faith with DPH, either:

(a) defend (subject to the procedure set forth in (d) below) and hold harmless DPH, and in the event a court of competent jurisdiction issues a final, non-appealable order finding infringement, indemnify DPH against such claim of infringement and any liability, loss, damage, cost and expense thereby (including reasonable attorneys' fees) resulting from the claim. Contractor shall not have the right to settle or compromise any claim without the prior written consent of DPH, which consent shall not be unreasonably withheld or delayed. The parties shall reasonably cooperate in the investigation and defense of any action covered by this indemnification, and to the extent DPH has elected not to control the proceedings pursuant to sub-section (d) below, DPH shall be entitled to participate in any defense or settlement (including with its own counsel at its own expense); or,

(b) alternatively, Contractor may, at its sole discretion after consulting in good faith with DPH, (i) procure for DPH the right to continue using the VDT Platform Services as set forth hereunder; (ii) replace or modify the VDT Platform Services to make it non-infringing so long as the VDT Platform Services has at least equivalent functionality; or (iii) substitute an equivalent for the VDT Platform Services. If options (i)–(iii) are not reasonably practicable, as reasonably determined by the parties in good faith, Contractor may terminate this Contract upon written notice to DPH. For the avoidance of doubt, DPH retains all rights to pursue any and all legal or equitable remedies as set forth in the Commonwealth Terms and Conditions for Information Technology Contracts; provided that:

(c) Contractor shall have no obligations under (a) or (b) with respect to a claim of infringement to the extent that resulting from: (i) DPH's breach of this Contract, but only to the extent the third-party infringement that is at issue in such claim would not have occurred or have existed but for such breach; or (ii) the combination of the VDT Platform Services and other third party software or intellectual property, in each case not provided by Contractor, but only to the extent the infringement that is at issue in such claim would not have occurred or have existed but for such combination.

(d) In the event that DPH receives a Claim Notice, DPH shall promptly provide Contractor with a copy of the Claim Notice and DPH shall have the right, but not the obligation, to elect to control the defense or response to such allegation, and subject to the last two sentences of sub-section (a) above.

10. Contractor shall obtain prior approval from DPH before Contractor or any of its officers, agents, employees or subcontractors respond to any media inquiry, make any public comment or issue other public communication regarding any aspect of this Contract. Further, Contractor shall not (a) issue or authorize the issuance, display, distribution or publication of any news story, publicity release, interview, promotional or marketing material, public announcement, testimonial, advertising or other marketing materials or collateral (collectively, "**Collateral**") relating to (i) this Contract or (ii) the services provided hereunder and/or (b) use the name or marks of, refer to, or identify the Commonwealth, DPH or any of its agencies in any Collateral without the prior written

approval of DPH (which approval DPH may withhold in its sole discretion), except no such written approval is required to the extent any such disclosure is required by law. DPH may withdraw such consent at any time.

11. Contractor is responsible for the professional quality, technical accuracy, and timely completion and delivery of all responsibilities performed by Contractor under this Contract. Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its performance of its responsibilities, including but not limited to, correcting any defects and Priority Level 1 - 3 incidents to the VDT Platform Services.

12. Prohibited Activities and Conflict of Interest.

a. Contractor certifies and agrees that neither it nor any of its owners, employees, affiliates, Subcontractors, consultants, agents and those who have a contract with Contractor shall:

- i. Have any interest that will conflict with the performance of services under this Contract or that may be otherwise anti-competitive, as determined by DPH, for the duration of the Contract; and
- ii. Have been excluded from participation in any program under Titles XVIII, XIX, or XXI of the Social Security Act or debarred by any federal agency, or subject to a civil money penalty under the Social Security Act.

13. Contractor shall disclose any financial, legal or ethical conflict of interest, whether potential or actual, to DPH prior to commencing the duties set forth herein, and where such conflicts are unforeseeable, it shall disclose immediately as any such conflict arises. A conflict shall include any relationship or action, past, present or future, that would lead a prudent person to make a disclosure under this paragraph. Contractor shall demonstrate to the satisfaction of DPH that Contractor's compliance with this Section of the Contract.

14. Representations and Warranties.

- a. Mutual. Each party represents and warrants that: (i) it has full power to enter into this Contract and to grant to the other party the rights granted to such other party under this Contract, (ii) it has obtained all necessary approvals to enter into and execute the Contract, and (iii) this Contract is its legal, valid and binding obligation, enforceable against it in accordance with the terms and conditions hereof.
- b. Contractor. Contractor represents and warrants that, to the best of its knowledge and belief, the VDT Platform Services will not infringe upon, violate or misappropriate any U.S. patent, copyright, trade secret, trademark, or other U.S. intellectual property right or interest of any third party.
- c. DPH. DPH represents and warrants that, to the best of its knowledge and belief, any provided-content (such as the ICF, intake questionnaire, and any information about vaccines) will be complete and accurate in all respects, comply with

applicable law, will not infringe upon, violate or misappropriate any U.S. patent, copyright, trade secret, trademark, or other U.S. intellectual property right or interest of any third party.

- d. Disclaimer. Except as provided in this contract, neither party makes any warranties (express, implied, statutory, or otherwise, including implied warranties of merchantability, fitness for a particular purpose or noninfringement of third party intellectual property rights) with respect to the subject matter hereof, and each party expressly disclaims such additional warranties. Contractor shall have no indemnification or other liability for any claims arising out of or related to: (i) DPH' negligence or willful acts, (ii) DPH-provided content such as the ICF, the intake questionnaire, (iii) any customization of the VDT Services in conformance with DPH' design, instructions, or specifications.

15. Feedback. During the course of this Contract, DPH agrees to use reasonable efforts to provide and Contractor may solicit DPH's input regarding Contractor's software, services, business, or technology plans provided to DPH under this Contract, including, without limitation, comments or suggestions regarding the possible creation, modification, correction, improvement or enhancement of Contractor's software, products and/or services, or input in connection with Contractor's development direction of the same (such DPH input, excluding any DPH confidential information, DPH property or any data or other information provided to or received by Contractor from or on behalf of DPH in furtherance of the services provided under this Contract, the "**Feedback**"). DPH acknowledges and agrees that any Contractor information disclosed by Contractor during discussions related to Feedback shall be considered Contractor confidential information and shall be protected from disclosure in accordance with the terms of the Contract. Subject to the obligations set forth in this Contract, Contractor may, on a non-exclusive basis, utilize the Feedback in any manner Contractor chooses and may display, perform, copy, make, have made, use, sell, and otherwise dispose of Contractor's products or services embodying the Feedback in any manner without restriction or remuneration of any kind with respect to DPH and/or its representatives. DPH acknowledges that the information related to software or Contractor, products, services, business or technology plans, disclosed to it under this Contract in connection with this **Section V, Article 15**, is only intended as possible strategies, developments, and functionalities of Contractor products or services and is not intended to be binding upon Contractor to any particular course of business, product strategy, and/or development. Except as set forth in this **Section V, Article 15**, nothing in this Contract shall be construed to transfer ownership of or a grant of license to any intellectual property or other rights to the intellectual property or technology of DPH, the Users or Contractor.

[# END OF TERMS #]

## Appendix E – Entitlements / VDT Platform Services Official User Roles

### VDT Platform Services Access

|  | DPH Administrator | Commonwealth Site Administrator or Vaccination Site Administrator |
|--|-------------------|---|
| View aggregate vaccination operations and site data for <i>All Sites</i>           | Yes               | No  |
| View aggregate vaccination operations and site data for <i>Provisioned Site(s)</i> | Yes               | Yes   |
| View individual Public User information for All Sites                              | Yes               | No  |
| View individual Public User information for Provisioned Site(s) only               | Yes               | Yes   |

### Site Administration Tool “Intake App” in VDT Platform Services

|   | Site Administrator | Site Vaccinator | Site Patient Intake “Staff” | Site Scheduler | Site Inventory Management |
|---|--------------------|-----------------|-----------------------------|----------------|---------------------------|
| Provision other users, manage permissions   | Yes                | No              | No                          | No             | No                        |
| Extract/download Public User names, appointment time, vaccination date, and/or contact info in CSV files ( <i>Pending</i> ) | Yes                | No              | No                          | Yes            | No                        |
| View list of Public Users with upcoming appointments and/or Public Users who have had a vaccine administered at the site    | Yes                | Yes             | Yes                         | Yes            | No                        |
| Check in Public Users & Update Info   | No                 | Yes             | Yes                         | No             | No                        |
| Record a vaccine administration   | No                 | Yes             | No                          | No             | No                        |
| Set up, change, or cancel a clinic schedule   | Yes                | No              | No                          | Yes            | No                        |
| Set vaccine inventory detail for site (manufacturer, batch, lot, expiration date)   | Yes                | No              | No                          | No             | Yes                       |

The nature and scope of the Entitlements for Official Users may be updated from time to time by mutual agreement of the parties writing (including email), including any permissions or limitations included therein or updates thereto.

# END OF APPENDIX E #



### **Appendix I – Commonwealth Sites**

Commonwealth Sites to be included as of Effective Date:

LabCorp  
CIC Health

Additional Commonwealth Sites may be included by written instruction by DPH with confirmation by Contractor (where such writing may be via email or such other format outside of an amendment, as mutually agreed).

# END OF APPENDIX I #

## **Appendix F – Data Fields**

Required software fields for reporting purposes as of the Effective Date.  
Field requirements are subject to change. DPH will notify Contractor when additional fields are required.

### **I. MIIS Data Fields**

#### **Patient Information**

- Patient ID
- Birthday
- First and last name (MI optional)
- Sex
- Protection indicator (whether patient records can be accessed by other providers)
- Race
- Ethnicity
- Address
- Phone number

#### **Order Information**

- Order id
- Entered by
- Entering organization
- Ordering provider

#### **Vaccine Administration Information**

- Date/time start of vaccine administration
- Administration code (type of vaccine)
- Amount of vaccine (mL)
- Name of Administering provider
- Title of Administering provider (3/1)
- Administered location
- Substance lot number
- Substance expiration date
- Substance manufacturer
- Completion status (partial or complete)
- Action code
  - Add, update or delete record
- Method used to give vaccination
- Body site of vaccination

#### **Additional Information**

- Vaccine funding source
- Vaccine eligibility category
- VIS statement published at
- VIS statement presented at

## **II. 105 CMR 222-**

Data for each Public User receiving a vaccine reported through the VDT Platform Services shall include at a minimum:

- (1) For both current and historical immunizations, the full first and last name and date of birth of the Public User, immunization type, and date of immunization administration;
- (2) For current immunizations, VFC status, Public User's current home address, immunization manufacturer and lot number, name, address, and title of the person administering the immunization, edition date printed on the appropriate VIS, and date the VIS was given to the Public User or the Public User's parents/legal representative (if younger than 18 years old); and
- (3) Any other information as determined by DPH.

## **III. Order of the Commissioner of Public Health Regarding Reporting to the Massachusetts Immunization Information System**

All vaccine providers administering a dose of COVID-19 vaccine in the Commonwealth must report such administration to the MIIS within 24 hours of administration. Said report shall include, as a minimum, the data fields already required by the Massachusetts COVID-19 Vaccine Program (MCVP) and 105 CMR 222.100(D). Additionally, Covid-19 vaccine providers shall also make every reasonable effort to collect complete demographic information including race and ethnicity and shall include this information in the provider's report.

## **IV. COVID Vaccine Reimbursement Required Service and Billing Data File Requirements**

Below is summary of data fields required for billing COVID-19 vaccine administration for the Vaccine Program. Refer specific Billing Data Field Template for specific data field order, values and format.

| <b>Template Field Description</b> | <b>Data Priority</b> | <b>Description or Comments</b>  |
|-----------------------------------|----------------------|---|
| <i>Account ID</i>                 | Required             | Unique third party billing services provider (TPBSP) Billing System Account# for Provider; To be entered in VDT Platform Services by TPBSP administrator; If using VDT Platform Services alternative, TPBSP will provide value.         |
| <i>Patient First Name</i>         | Required             | Patient Personal Information captured in registration.  |
| <i>Patient Middle Initial</i>     | Optional             | Patient Personal Information captured in registration.  |
| <i>Patient Last Name</i>          | Required             | Patient Personal Information captured in registration.  |
| <i>Patient Gender</i>             | Required             | Patient Personal Information captured in registration.  |
| <i>Patient Address 1</i>          | Required             | Patient Personal Information captured in registration.  |
| <i>Patient Address 2</i>          | Optional             | Patient Personal Information captured in registration.  |
| <i>City</i>                       | Required             | Patient Personal Information captured in registration.  |
| <i>State</i>                      | Required             | Patient Personal Information captured in registration.  |
| <i>Zip</i>                        | Required             | Patient Personal Information captured in registration.  |
| <i>Patient DOB</i>                | Required             | Patient Personal Information captured in registration.  |
| <i>Health Insurance Name</i>      | Required             | Patient Personal Information captured in registration. Desired Field is Payer ID for insurance carrier; TPBSP will provide insurance name to payer ID cross walk; Alternatively, Patient's Health Insurance Plan Name will be required. |

|   |   |   |
|---|---|---|
| <i>Primary Insurance Member ID</i>        | Required  | Patient Personal Information captured in registration.  |
| <i>Patient Relationship to Subscriber</i> | Required  | Enter 18 for Self, 19 for Child, 01 for Spouse, and G8 for Other  |
| <i>Subscriber Address</i>                 | Contingent on Relationship to Subscriber                          | Leave Blank if Patient is Self; Populate for all other scenarios.   |
| <i>Subscriber Address 2</i>               |   |   |
| <i>Subscriber City</i>                    |   |   |
| <i>Subscriber State</i>                   |   |   |
| <i>Subscriber Zip code</i>                |   |   |
| <i>Secondary Insurance Name</i>           | Required  | Patient Personal Information captured in registration. Desired Field is Payer ID for insurance carrier; TPBSP will provide insurance name to payer ID cross walk; Alternatively, Patient's Health Insurance Plan Name will be required.   |
| <i>Secondary Insurance Member ID</i>      | Required  | Patient Personal Information captured in registration.  |
| <i>Patient Relationship to Subscriber</i> | Required  | Enter 18 for Self, 19 for Child, 01 for Spouse, and G8 for Other  |
| <i>Subscriber Address</i>                 | Leave Blank if Patient is Self; Populate for all other scenarios. | Leave Blank if Patient is Self; Populate for all other scenarios.   |
| <i>Subscriber Address 2</i>               |   |   |
| <i>Subscriber City</i>                    |   |   |
| <i>Subscriber State</i>                   |   |   |
| <i>Subscriber Zip code</i>                |   |   |
| <i>ICD Indicator</i>                      | Required  | Value always = 2  |
| <i>ICD Code 1</i>                         | Required  | Value for Vaccine Admin always = Z23  |
| <i>Service Description</i>                | Required if CPT or Admin Blank                                    | Requires specific service descriptions provided by FDA. Services description to be provided by TPBSP.   |
| <i>Date of service</i>                    | Required  | Format YYYY/MM/DD   |
| <i>CPT or Admin Code</i>                  | Contingent on System Reporting Capability                         | Values = 91300 or 91301 or 0001A, 0002A, 0011A or 0012A; Separate row for Vaccine and Admin codes per patient vaccinated is required. If CPT Code and Admin Code cannot be provided for each patient on two rows, follow Service Description Requirements and leave this field blank. |
| <i>QTY</i>                                | Required  | Expected Value Always = 1   |
| <i>Payer Type</i>                         | Required  | ##  |

# END OF APPENDIX F #

## **Appendix P – VDT Platform Services Product Roadmap**

*The below table represents estimated product release timeframes. Roadmap may be changed by mutual agreement between DPH and Contractor in writing (including email or as set forth in a mutually agreed upon project management documentation application).*

| Feature  | Estimated Launch Date |
|--|-----------------------|
| <b>Translations</b>  |                       |
| Spanish language translation   | 2/18/2021             |
| Portuguese language translation  | 3/1/2021              |
| Simplified Chinese language translation  | 3/1/2021              |
| <b>Patient Experience / Registration</b>   |                       |
| Health/vaccine history questions (CDC 11 Q's)  | 2/18/2021             |
| Digital proof of vaccination - Simplified  | 2/18/2021             |
| Private schedule links   | 2/19/2021             |
| Minor Registration   | 2/25/2021             |
| Register on behalf of Others   | 2/25/2021             |
| On-the-spot registration   | 2/19/2021             |
| Digital proof of vaccination - Updated (details TBC)   | 4/15/2021             |
| <b>Clinic Self-Service</b>   |                       |
| Self-service schedule set-up: Add calendars, adjust appointment window & length  | 2/19/2021             |
| Self-service schedule set-up: Remove / cancel appointments   | 2/26/2021             |
| Simple lot management  | 2/22/2021             |
| Self-service account provisioning (organizations provision their own staff and assign roles; provisioning complete within minutes) | 2/26/2021             |
| Discrete user roles available for site administration, scheduling, vaccination, intake, and inventory management                   | 2/26/2021             |
| Advanced lot management  | 3/1/2021              |
| New vaccine manufacturer readiness (e.g., J&J)   | 3/1/2021              |
| <b>Insurance Billing</b>   |                       |
| Commonwealth Medicine Billing Integration  | 3/1/2021              |
| <b>Security</b>  |                       |
| MFA/2FA for site staff & admin accounts “Official Users”   | 4/2/2021              |
| Audit logs for intake tool users, including searches   | 3/15/2021             |
| <b>State Reporting</b>   |                       |
| MIIS Integration   | 2/22/2021             |
| <b>Dashboards / Analytics</b>  |                       |
| Daily reports for state and sites  | 2/18/2021             |
| Real-time dashboards   | 3/1/2021              |

| <b>Under Evaluation</b>                                  |                             |
|--|-----------------------------|
| API integration with Project Beacon for mass.gov webpage | To be agreed by the parties |
| Insurance info adjustment/updates by onsite staff        | To be agreed by the parties |
| Search for a patient functionality                       | To be agreed by the parties |
| ‘Smart’ second dose scheduling                           | To be agreed by the parties |

# END OF APPENDIX P #

## **Appendix S – System Security**

As part of the VDT Platform Services, Contractor will be required to use Commonwealth data and IT resources in order to fulfill part of its specified tasks. For purposes of this Appendix S, “Commonwealth Data” shall mean data provided to Contractor by DPH and/or Users under this Contract, to the extent it is stored on the VDT Platform Services, Contractor’s premises or is otherwise stored on Contractor’s information systems. In connection with such Data, Contractor will implement commercially reasonable safeguards necessary to:

- Prevent unauthorized access to Commonwealth Data from any public or private network;
- Prevent unauthorized physical access to any information technology resources storing, using or accessing Commonwealth Data and
- Prevent interception and manipulation of Commonwealth Data during transmission to and from any servers.

Contractor will notify DPH as soon as practicable, but in any event within 24 hours, if any Commonwealth Data is Breached (as defined in 45 CFR § 164.402, whether or not such data constitutes PII or PHI) or to the extent any Commonwealth Data is used, accessed or stored in violation of the terms of this Contract.

# END OF APPENDIX S #

## Exhibit BAA

### Business Associate and Confidentiality Agreement

#### **I. GENERAL PROVISIONS**

The Massachusetts Department of Public Health (Department) is, among its duties, responsible for taking cognizance of the interests of life, health, comfort and convenience among the citizens of the Commonwealth and may distribute immunological, diagnostic and therapeutic agents within the Commonwealth, M.G.L. c. 111 §5, and is an Emergency Response Stakeholder pursuant to the December 2020 Letters of Authorization issued by the US Food and Drug Administration to ModernaTX, Inc. and Pfizer-BioNTech in response to those entities' requests for Emergency Use Authorization of their COVID-19 vaccines.

This Business Associate and Confidentiality Agreement (Agreement) is intended to protect the privacy and security of all Personal Data, including Protected Health Information, that the Vendor may receive from, host, transmit, create and/or otherwise access on behalf of a Commonwealth Site in the performance of its obligations to the Department, and to ensure that the Commonwealth Sites comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the HIPAA Privacy and Security Rules, 45 C.F.R. Parts 160 and 164, and the HITECH Act; the Fair Information Practices Act (FIPA), M.G.L. c. 66A; and M.G.L. c. 93H.

#### **II. DEFINITIONS FOR USE IN THIS SECTION**

All terms used, but not otherwise defined herein shall be construed in a manner consistent with the HIPAA Privacy and Security Rules, The Fair Information Practices Act, and other applicable state or federal privacy or confidentiality laws.

“Breach” means the acquisition, access, use, or disclosure of protected health information in a manner not permitted under HIPAA or M.G.L. c. 93 H which compromises the security or privacy of the PHI.

“Business Associate” means a person or entity, who, on behalf of a HIPAA covered entity, and other than in the capacity of a workforce member, performs or assists in the performance of a function or activity that involves the use or disclosure of protected health information; or provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation or financial services, where the provision of the service involves the use or disclosure of protected health information.

“Commonwealth Site” is as defined in the Contract.

“Contract” means the underlying Contract entered into in connection with this Agreement.

“Data Subject” means an individual to whom Personal Data or Protected Health Information refers.

“Electronic Media” means:

- Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or
- Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet



technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Faxes sent directly from one fax machine to another, person-to-person telephone calls, video teleconferencing, and messages left on voice-mail are not considered transmission media. However, any faxes sent from a computer, including those made by a fax-back system, are considered transmission media.

“Electronic Protected Health Information” (EPHI) means PHI that is created, accessed, stored, or transmitted by electronic media.

“The Health Insurance Portability and Accountability Act” (HIPAA) means Public Law 104-191.

“The HITECH Act” means Title XIII of the American Recovery and Reinvestment Act of 2009, specifically the provisions of Subtitle D – Privacy, which shall hereinafter be included under references to HIPAA.

“Personal Data” (PD) means any information in any medium concerning an individual, which because of name, identifying number, mark or description can be associated with a particular individual. Protected Health Information and Electronic Protected Health Information as defined herein, constitute subsets of Personal Data.

“Privacy Rule” means the privacy regulations set forth in 45 C.F.R. Parts 160 and 164 and as amended.

“Protected Health Information” (PHI) means information in any form or medium that relates to the past, present or future, physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe can be used to identify the individual, that the Vendor receives, creates or uses under the Agreement. The terms “Protected Health Information” and “PHI” apply to the original data and to any data derived or extracted from the original data. PHI includes EPHI and is a subset of Personal Data.

“Required By Law” means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law.

“Secretary” means the Secretary for the Office of Health and Human Services or his designee.

“Security Rule” means the Security standards for the protection of EPHI as set forth at 45 C.F.R. Parts 160, 162 and 164 and as amended.

“Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

### **III. OBLIGATIONS OF THE VENDOR**

**Section 1. Compliance with State and Federal Law.** The Vendor acknowledges that in the performance of its obligations, it may receive PHI.<sup>1</sup> The Vendor acknowledges that by accepting the

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<sup>1</sup> Hereinafter this Agreement shall use the reference “PHI” to conform to the terms of the HIPAA Privacy Rule. However, to the extent that Vendor holds any PD, as defined by M.G.L. c. 66A, which does not

PHI it becomes a “holder” within the meaning of M.G.L. c. 66A and will comply with the requirements of that law in addition to HIPAA and all other applicable state or federal laws governing the privacy or security of any PHI subject to this Agreement.

**Section 2. Ownership of PHI.** The Vendor shall at all times recognize the Department and the Commonwealth Sites as sole owners of the PHI. Subject to applicable law, the Department shall at all times have complete control over the access, use, disclosure and disposition of the PHI including, if relevant, editorial control over the output.

**Section 3. Agreements by Third Parties.** The Vendor shall not engage a subcontractor or agent that will receive PHI originating from the Commonwealth Sites or create or receive PHI on behalf of Commonwealth Sites without prior authorization from the Department. If the Department authorizes the Vendor in advance to engage such a subcontractor or an agent, the Vendor shall obtain and maintain a written agreement with each agent or subcontractor. As of the Effective Date of the Contract, the parties agree that the following are authorized as subcontractors or agents to provide portions of the VDT Services: Amazon AWS (Amazon) and Google’s cloud storage technology (Google) and that such subcontractors or agents sites are HIPAA-compliant. The agreement shall provide that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Vendor pursuant to this Agreement with respect to such PHI, including but not limited to implementing reasonable and appropriate safeguards to protect the information; provided, however, notwithstanding the foregoing, Amazon and Google shall be bound by a HIPAA compliant Business Associate Agreement. All provisions of the Agreement apply to all such PHI, whether in the possession of the Vendor or any agent or subcontractor. The Vendor is responsible for ensuring each agent’s and subcontractor’s compliance with all applicable provisions of the Agreement. Upon request, the Vendor shall provide the Department with a copy of the written terms between the Vendor and the subcontractor or agent.

**Section 4. Compliance with Use and Disclosure Provisions.** Vendor agrees to comply with the use and disclosure provisions of HIPAA as established in 45 CFR §164.502(e)(2) and the requirements of §164.504(e) shall apply to Vendor in the same way they apply to the Commonwealth Sites.

**Section 5. Security: Appropriate Safeguards.** 45 CFR §§164.308, 164.310, 164.312 and 164.316 shall apply to the Vendor. Vendor agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI. Such safeguards shall meet, at a minimum, the standards as set forth in the Privacy and Security Rules. Appropriate safeguards shall include, at a minimum:

- Protecting the physical and electronic security of the PHI, including any data created, accessed, stored, or transmitted by electronic media.
- Taking steps to prevent unauthorized access to the PHI, including preventing unauthorized access through the use of individual Public User and Official User accounts which are password protected and can also be audited for compliance with the Entitlements set under this Agreement.
- Providing appropriate training in the privacy and security policies and procedures applicable to PHI for each of its employees, agents, or subcontractors who will have access to the Commonwealth Sites PHI as set forth in applicable laws and regulations.

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constitute PHI, the PD shall also be covered under all the terms of this Agreement that refer to PHI. For the avoidance of doubt, these terms are limited to PD, including PHI, received or created by Vendor pursuant to its obligations in the Contract.

- Requiring each of its employees, agents, or subcontractors having any involvement with the PHI to comply with applicable laws and regulations relating to confidentiality and privacy of the PHI as well as the security of EPHI.
- Unless otherwise authorized in writing, all copies of any Commonwealth Site data stored on electronic storage media, including thumb drives, controlled by the Vendor, must be destroyed upon termination of the Agreement. Data must be destroyed so that it cannot be recovered from the electronic storage media. Acceptable methods include the use of file wiping software implementing at a minimum DoD.5200.28-STD (7) disk wiping, and the degaussing of backup tapes. Electronic storage media such as floppy disks, CDs, and DVDs used to store data must be made unusable by physical destruction.
- Upon request, the Vendor will furnish the Department with a description of the steps it has taken to prevent use or disclosure of the PHI not authorized by this Agreement and agrees to allow authorized representatives of the Department access to premises where the PHI is kept for the purpose of inspecting security (physical and electronic) arrangements.

**Section 6. Non-Secure Transmissions Prohibited.** The Vendor agrees that it will not transmit the PHI over any unsecured network without the prior written permission of the designated representative of the Department accessing the Vendor services under this Agreement. The Vendor is expected to comply with NIST standard FIPS 140-2 when transmitting PHI over the Internet.

**Section 7. Reporting of Breach or Security Incident.** The Vendor shall notify the designated representative for the Department both orally and in writing within five days following the discovery of any Breach of PHI, including but not limited to any unauthorized use or disclosure of unsecured PHI or any security incident compromising or reasonably likely compromising any PHI.

**Section 8. Responsibility for Breach Notification.** The Vendor shall pay the full cost of Breach notification for any notification required under HIPAA or M.G.L. c. 93 A, for any Breach for which Vendor, its agents or employees is responsible or any Breach that occurred through its information system(s), whether the notice is given by the Department, a Commonwealth Site, or the Vendor.

**Section 9. Mitigation.** The Vendor shall mitigate, to the extent practicable, any harmful effect that is known to the Vendor of its use or disclosure of PHI in violation of this Agreement or any security breach. The Vendor shall in consultation with the Department take measures that the Department deems appropriate to recover the PHI and prevent a future breach of the confidentiality and security of the PHI. The Vendor shall report to the Department the results of all mitigation actions taken. Nothing in this Section will be deemed to waive any of the Department's or a Commonwealth Site's legal rights or remedies that arise from the Vendor's unauthorized use or disclosure of the PHI or security breach.

**Section 10. Red Flags Rule.** Where applicable (i.e. where Vendor, in performing its obligations under the Contract, is acting as a "creditor" (as defined by the federal Red Flags Rule), and at the direction of the Department, Vendor shall implement and maintain appropriate identity theft management programs in compliance with the federal Red Flags Rule.

**Section 11. Notice of Request for Data.** The Vendor agrees to notify the Department within five (5) days of the Vendor's receipt of any legal request, court order, or subpoena for PHI. To the extent that the Department decides to assume responsibility for challenging the validity of such requests, the Vendor agrees to cooperate fully with the Department in such challenge.

**Section 12. Access to PHI.** The Vendor shall provide the Department with access to or copies of any PHI, which it maintains as shall be necessary to meet its obligation under 45 C.F.R. § 164.524 and M.G.L. c. 66A. Such access or copies shall be provided within five (5) days of a request.

**Section 13. Availability of PHI for Amendment.** The Vendor shall make any amendment(s) to PHI that it received from or created or received on behalf of the Commonwealth Sites that the Department directs, in order for the Commonwealth Sites to meet obligations under 45 C.F.R. § 164.526 and M.G.L. c. 66A. All such amendments shall be made within ten (10) days of receipt of the request from the Department.

**Section 14. Accounting of Disclosures.** The Vendor shall document PHI disclosures and required information related to such disclosures, as is necessary for the Commonwealth Sites to respond to an individual's request for accounting of disclosures of PHI under 45 C.F.R. § 164.528 and M.G.L. c. 66A and for the Vendor to perform its obligations under the Contract, including but not limited to Section II.A. The Vendor agrees to provide to the Department, within ten (10) days of the request, an accounting of disclosures of PHI. At a minimum, the Vendor will provide the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. The Vendor agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section and to provide upon the Department's request documentation of its method of tracking disclosures and a list of all accountings of disclosures provided under this Section.

**Section 15. Access by Secretary to Records.** The Vendor shall make available to the Department or the Secretary its internal practices, books, and records including policies and procedures relating to the use and disclosure of the PHI received from the Commonwealth Sites, or created or received by the Vendor on behalf of the Commonwealth Sites as well as policies and procedures relating to the confidentiality and security of the data. The Department or the Secretary shall determine the time and manner for making such material available for purposes of the Secretary determining the Commonwealth Sites' compliance with the Privacy and Security Rules.

**Section 16. Prohibition on the Sale of PHI or Electronic Health Records.** The Vendor shall comply with 45 CFR § 164.502(a)(5), which relates to the prohibition on the sale of electronic health records and PHI.

#### **IV. PERMITTED USES AND DISCLOSURES BY THE VENDOR**

**Section 1. Uses and Disclosures of PHI.** The Vendor agrees to use or disclose PHI that it receives from and/or creates or receives on behalf of the Commonwealth Sites only as specified in this Section IV or as required by law.

**A. To Perform its Obligations.** The Vendor may use or disclose PHI, or create PHI on behalf of the Commonwealth Sites, as is necessary for the Vendor to administer or perform the functions, activities and services that are required to satisfy its obligations. This shall include providing the Secretary and the Department with full access to such PHI for purposes of auditing the performance of the Vendor as the Department determines is otherwise necessary. Operations shall include reporting to the Commonwealth Sites to fulfill state or federal reporting requirements.

**B. For Research or Publication.** The Vendor agrees that it shall not conduct any research utilizing the PHI received from the Commonwealth Sites. Further the Vendor agrees that it shall not utilize the PHI for any publication without the written approval of the Department for the specific publication.

**C. For Management and Administration.** The Vendor may use PHI that it receives from and/or creates or receives on behalf of the Commonwealth Sites for the proper management and administration of the Vendor as provided for by 45 C.F.R. § 164.504(e)(1), (3) and (4), provided that such use complies with the requirements of the Contract, this Business Associate Agreement, and all other applicable state or federal privacy or confidentiality laws, including but not limited to internal quality assessment and improvement activities, payment activities to the extent required by the Contract or otherwise requested by DPH.

**Section 2. Minimum Necessary.** The Vendor agrees to take reasonable steps to limit the amount of PHI used and/or disclosed pursuant to Section 1 above to the minimum necessary to achieve the purpose of the use and disclosure.

## **V. OBLIGATIONS OF THE COMMONWEALTH**

**Section 1. Notice of Privacy Practices.** The Department shall notify the Vendor of any limitation(s) in the Commonwealth Sites notices of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect the Vendor's use or disclosure of PHI.

**Section 2. Revocation of Permission to Use PHI.** The Department shall notify the Vendor of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect the Vendor's use or disclosure of PHI.

**Section 3. Restriction to Use or Disclose PHI.** The Department shall notify the Vendor of any restriction to the use or disclosure of PHI that a Commonwealth Site has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such changes may affect the Vendor's use or disclosure of PHI.

**Section 4. Notice of Changes and Restrictions.** The Department shall notify Vendor of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent such changes affect Vendor's permitted or required uses and disclosures. Such notification shall include any restriction that a Commonwealth Site has agreed to in accordance with 45 CFR § 164.522. If Vendor receives a request to restrict the disclosure of PHI directly from an Individual, Vendor shall notify the Department of such request and the Department shall be responsible for making the determination, in accordance with the Privacy Rule, as to whether Vendor shall comply with the Individual's request.

## **VI. TERMINATION OR COMPLETION**

**Section 1. Notification to Secretary.** In the event that the Department determines, in its sole discretion, that the Vendor has materially breached any of its obligations regarding PHI, the Vendor hereby acknowledges that the Department will have the right to report this breach to the Secretary, notwithstanding any other provisions of this Agreement to the contrary.

### **Section 2. Effect of Termination or Completion.**

- A.** The Vendor agrees that within 14 days of the termination or completion of its obligation to the Department, it will return or destroy, at the Department's direction and according to standards approved by the Department, any and all PHI that it maintains in any form, including PHI that is in the possession of its subcontractors or agents and will retain no copies of the PHI.
- B.** Notwithstanding the foregoing, to the extent that the Department agrees that if it is not feasible to return or destroy such PHI, all protections pertaining to any PHI covered by this Agreement shall remain in force and the Vendor will limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Vendor maintains such PHI.

**Section 3. Transition Assistance.** Following the termination of its obligation for any reason, the Vendor agrees to provide transition services for the benefit of the Department, including but not limited to the transfer of PHI and other data held by the Vendor.

## **VII. MISCELLANEOUS PROVISIONS**

**Section 1. Regulatory References.** A reference in this Agreement to a section of the Privacy or Security Rule means the section as in effect or as amended.

**Section 2. Survival.** The obligations of the Vendor under Part VI of this Agreement shall survive the termination of this Agreement.

**Section 3. Amendment.** The Vendor and the Department agree to negotiate to amend the Business Associate Agreement to the extent necessary to allow either party to comply with amendments to the Privacy or Security Rules or the Standards for Electronic Transactions.

**Section 4. Remedies.** Nothing in this Agreement shall be construed to waive or limit any of the Commonwealth Sites' legal rights or remedies that may arise from the Vendor's unauthorized use or disclosure of PHI or security breach. The Department's exercise or non-exercise of any authority under the Agreement including, for example, any rights of inspection or approval of privacy or security practices or approval of subcontractors, shall not relieve the Vendor of any obligations as set forth herein nor be construed as a waiver of any of the Vendor's obligations, or as an acceptance of any unsatisfactory practices, or privacy or security failures by the Vendor.

**Section 5. Interpretation.** Any ambiguity in this Agreement shall be resolved to permit the Commonwealth Sites to comply with HIPAA's Privacy or Security Rules, M.G.L. c. 66A, M.G.L. c. 93 H, and any other law pertaining to the privacy or security of PHI.