



COVID-19 TESTING SERVICES AGREEMENT

This COVID-19 TESTING SERVICES AGREEMENT (the “**Agreement**”) is entered into by and between Color Health, Inc. (f/k/a Color Genomics, Inc.), a Delaware corporation located at 831 Mitten Road #100, Burlingame, CA 94010 (“**Color**”) and the business entity described in Paragraph A below (the “**Client**”). Color provides molecular testing to detect the presence of SARS-CoV-2, the virus known to cause coronavirus disease 2019 (the “**Test**” or “**Testing**”), through a distributed proprietary software service and laboratory testing platform. By signing below, the Client agrees to have the Services performed by Color (or its subcontractor(s)) for Eligible Individuals pursuant to the terms and conditions set forth herein (the “**Agreement**”). For purposes of this Agreement, Color and Client each shall be referred to individually as a “**party**” and collectively as the “**parties**”. All exhibits attached hereto shall be incorporated herein.

A. **Client:** _____
Address: _____
Contact Name: _____
Phone: _____
E-mail: _____

B. Services: Tests, platform services, and selected pass-through services shall be provided as described in Exhibit A hereto (collectively, the “**Services**”).

C. Terms and Conditions: This Agreement and the Services conducted hereunder will be subject to the terms and conditions attached as Exhibit B hereto, which are expressly incorporated into this Agreement (the “**Terms and Conditions**”).

D. Eligible Individuals: Client shall be solely responsible for determining the students, staff, and other individuals who are eligible to participate in the Services, including the frequency of Testing, pursuant to Client’s policies and all applicable guidelines and regulations (the “**Eligible Individuals**”).

E. Effective Date: _____

F. Term: The term of this Agreement shall commence on the Effective Date and terminate one year following the Effective Date (the “**Initial Term**”). At the end of the Initial Term, this Agreement shall renew automatically for additional one-year terms (each a “**Renewal Term**”, with the Initial Term and the Renewal Term referred to as the “**Term**”, as appropriate), unless either party provides written notice not to renew the Agreement sixty (60) days’ prior to the expiration of the then current Term, or either party provides notice of termination in accordance with the Terms and Conditions.

G. Fees: In consideration of the performance of the Services hereunder, Client will pay Color the Fees set forth in Exhibit A.

COLOR HEALTH, INC.

By: _____
Name: Caroline Savello
Title: Chief Commercial Officer
Date: _____

CLIENT

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

TESTS AND SERVICES

Testing Logistics

Emergency Use Authorization and Test: Color has received an Emergency Use Authorization (the “EUA”) from the Food and Drug Administration (“FDA”) regarding the Test, as may be updated or modified from time to time pursuant to a new EUA, an amendment to an existing EUA, or FDA regulations and guidance regarding the performance of lab-developed tests without an EUA.

Sample Collection: Specimen samples (“Samples”) will be collected at an appropriate site designated by Client at its sole discretion. Client shall be responsible for returning all Samples to Color in accordance with Color’s shipment and timing instructions.

Site Management: Client will operate its Sites at its sole discretion and expense, including any staffing and administrative management of Sites, including provision of any personal protective equipment required for Client staff.

Services

Fees

Testing Services

Upfront Fee and Test Services Fee

Testing Services include:

- One (1) Sample collection kit (“Collection Kit”) per Test**.
- Testing of the Sample.
- Reporting of Results:
- At the instruction of the ordering provider, results will be reported directly to Eligible Individuals via a HIPAA-compliant portal, with access prompted digitally via text/email as soon as results are ready;
- Results will be reported directly to the ordering provider and to others pursuant to Applicable Law;

As provided in your receipt attached to this Agreement

Replacement Collection Kits*: If a Collection Kit sent in connection with a Test needs to be replaced, a replacement Collection Kit for that Test may be ordered for \$25.

* **Non-Refundable:** The Minimum Upfront Fee, Pre-Pay Test Rate fees, are non-refundable and non-creditable, and are invoiced upon signing.

Additional Services

Additional Services Fees

Order review/healthcare provider support services: Color shall contract with a healthcare provider service on Client’s behalf, which service shall be duly licensed to act as Client’s physician of record to request Testing for, and reporting of results directly to, Eligible Individuals for occupational health and safety purposes (the “OHS-POR Services”). Color has been authorized and appointed by the OHS-POR Service to act as its billing agent for such OHS-POR Services, and to bill, receive, and transmit such payment from Client to such healthcare provider service as a direct pass-through, provided that the OHS-POR Service provider shall not be deemed a subcontractor of Color under this Agreement. Client agrees that it shall not, directly or indirectly, seek insurance reimbursement, in whole or in part, for any Testing that is requested/ordered through the OHS-POR Services.

OHS-POR Services Fees: Direct pass-through of costs from a clinical advisory firm at the below rates for the eligible population size, with no markup, as described on the invoice attached hereto.

EXHIBIT B: TERMS AND CONDITIONS

1. **Services.** (a) Color will administer or perform (or have performed through subcontractors) the Services on behalf of Client and return Test results for Eligible Individuals identified by Client in compliance with applicable US laws, rules, and regulations (“**Applicable Laws**”). This service relationship is non-exclusive.

(b) Client acknowledges and agrees that the Test is a physician-ordered test. Color shall only provide Testing Services on Samples upon receipt of an order submitted by an authorized healthcare provider (“**HCP**”), and each an “**Order**”) using Color’s paper or on-line Test Requisition Form (“**TRF**”).

(c) It shall be the responsibility of Client to engage an HCP and obtain Orders for Eligible Individuals to obtain the Test. Nothing in this Agreement shall relieve an ordering HCP of its responsibilities for the care of its patients, including the proper ordering of the Test based on clinical criteria or occupational health purposes, and such HCP’s use of Test results or information provided by Color relating to the Services and the Tests. Accordingly, Client agrees that Color shall have no liability (including for indemnification claims) regarding matters that are the responsibility of the HCP, including Test ordering criteria, cadence of repeat testing, criteria for determining Eligible Individuals (e.g., inclusion of Minor/Incompetent EI’s”), and the use of Test results. If At-Home Sample Collection is being provided Client shall adhere to all requirements of the EUA applicable for At-Home Sample Collection.

2. **Sample Acceptance and Retention.** Client must strictly adhere to Color’s collection, shipping, and handling SOPs and written instructions, including without limitation all instructions regarding timelines for collection and receipt of Samples for processing by the laboratory (“**Collection and Shipping Instructions**”). Color shall have no liability with respect to Samples or results that were not collected and submitted for processing following such Collection and Shipping Instructions. A Sample will be considered accepted only when the processing lab has received and inspected the Sample, received a TRF containing all correct, required information, and has determined that the Sample was collected and sent in accordance with Collection and Shipping Instructions and determined that it can perform the Test as requested (collectively “**Acceptance**”). If a Sample is not Accepted, Color will destroy the Sample and will have no further liability or obligation to Client or the Eligible Individual or their ordering HCP in relation to such Sample. Color shall retain or destroy Samples in compliance with Applicable Laws.

3. **Fees; Invoices and Payment.** (a) Client will pay Color the Service fees set forth in Exhibit A (each, a “**Fee**”, and collectively the “**Fees**”). Color reserves the right to change the Fees with thirty (30) days prior written notice to Client. Upon full execution of the Agreement, the Minimum Upfront Fee shall be due and payable. The Minimum Upfront Fee, Additional Pre-Pay Test fees, and Replacement Collection Kit Fees are non-refundable and non-creditable, and Tests shall be drawn down upon applicable pre-paid fees until depleted. Pre-Pay Test Fees must be paid prior to Color shipping additional Collection Kits.

(b) All other invoices, including additional Tests ordered at the Per-Test Rate and Replacement Collection Kit Fees shall be invoiced in arrears and shall be paid by the Client within thirty (30) days from the date of the invoice.

(c) Client shall pay Color for all Services not subject to a good faith dispute by wire transfer or other mutually agreed method, without offset or deduction, in US Dollars.

(d) The parties agree that the fees to be paid to Color hereunder are separate from any fees charged by Client to third party payers, insurance companies, and/or Eligible Individuals (collectively, “**Payers**”). Color shall have no responsibility for collecting, or assisting in the collection of, payment from Payers. Client’s obligations to pay Color hereunder are not in any way contingent upon Client receiving payment for any Tests from or on behalf of any Payers, and Client is responsible for paying Color as provided for herein without regard to when Client receives payment from Payers. As between the parties, Client is solely responsible for ensuring its compliance with all applicable insurance billing regulations. Further, Client agrees that it shall not, directly or indirectly, seek insurance reimbursement, in whole or in part, for any Testing that is requested/ordered through the OHS-POR Services.

(e) The following third-party fees for which Color is not the ultimate beneficiary shall be referred to collectively as “Third Party Pass-Through Fees”: Sample Collection Site, Logistics, OHR-POR Services, and Related Services Fees; sample collection clinical staff fees; shipping & handling fees; and all other fees for “Additional Services” listed on Exhibit A.”

(f) Color shall act as the billing agent for the subcontracted “Additional Services”, including OHS-POR Services listed on Exhibit A, and Color shall charge and invoice the fees described in Exhibit A under “Additional Services”. Color shall issue an invoice upfront and following the end of each calendar month during the Term (as set forth in Exhibit A), and accept payment from Client as a pass through for subcontracted services.

4. **Confidentiality.** Client and Color each agree to treat all information they may receive about the other party in strict trust and confidence as the confidential information of such party, including information about its pricing, operations, facilities, methods, processes, protocols, procedures, and business. Client and Color each agree not to disclose or allow the disclosure of any such information to any third party without the other party’s prior written approval, except as may be required by Applicable Laws.

5. **Data and Intellectual Property.** (a) Color may use the Samples and all information that is provided to Color in a TRF (“**Data**”) as necessary in connection with its performance of Services hereunder. Except as expressly set forth in this Agreement, neither party grants to the other by implication, estoppel or otherwise, any right, title, license or interest in any intellectual property rights. Color owns all right, title and interest (including patent rights, copyrights, trade secret rights, mask work rights,

trademark rights, and all other intellectual property rights of any kind throughout the world) in and to Services, including all Tests and related documentation, Color’s web portal and software, its marketing materials and content displayed or provided as part of the Services and Tests as well as all copies and derivative works thereof (collectively, the “**Color Property**”).

(b) Prior to allowing an Eligible Individual to use and access Services, each Eligible Individual shall be required to provide consent to the Testing. Color shall use an Eligible Individual’s Data solely to perform the Services and as otherwise authorized by the Eligible Individual or as permitted by Applicable Law or health order, for example, use of de-identified data provided by an Eligible Individual and/or their Test results for quality assurance, lab validation, and Testing improvement purposes..

6. **Limited Warranty and Exclusive Remedy.** Subject to the terms and conditions of this Agreement, Color will perform the Tests and Services in accordance with Color’s standard protocols (see Section 7(c)(v) herein for links where these can be reviewed) for conducting such Tests and Services (the “**Limited Warranty**”). Client’s sole and exclusive remedy for any breach by Color of the Limited Warranty will be to have Color re-perform the affected Tests and Services, provided that Color receives any additional Samples as are necessary to re-perform the affected Services. Client shall have ten (10) days from an Eligible Individual’s or ordering HCP’s receipt of the Test result to inform Color in writing of any claim that the Services fail to comply with the Limited Warranty.

7. **Disclaimers and Limitations.**

(a) EXCEPT AS EXPRESSLY PROVIDED IN THE LIMITED WARRANTY, COLOR PROVIDES ALL TEST RESULTS AND OTHER SERVICES “AS IS” AND WITHOUT WARRANTY OF ANY KIND. ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO NON-INFRINGEMENT AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED AND EXCLUDED.

(b) Color does not practice medicine, or provide medical treatment or medical advice, and does not make any representations, warranties, guarantees, or endorsements regarding any healthcare services or advice that may be obtained through Color’s Services. Without limiting the generality of the foregoing, Client acknowledges and agrees that the Test results should not be the sole basis on which any HCP, Eligible Individual, or any third party should make a clinical decision.

(c) Color and Client further acknowledge and agree to the following: (i) the Test tests for the presence of SARS-CoV2 (severe acute respiratory syndrome coronavirus 2), which causes the coronavirus disease 2019 (“**COVID-19**”) and the intended use of the Test is to help a treating HCP guide how to care for an Eligible Individual; (ii) a positive Test result indicates it is very likely that the subject Eligible Individual has COVID-19, but there is a small chance that this Test can give a positive result that is wrong (a false positive result); (iii) a negative test result means that the virus that causes COVID-19 was not found in the subject Sample, however it is possible for this Test to give a negative result that is incorrect (false negative) in some people with COVID-19, which means that an Eligible Individual could possibly still have COVID-19 even though the Test result is negative; (iv) in certain cases, an Eligible Individual may not receive a definitive Test result because of early infection or inadequate sampling; and (v) please refer to www.color.com/covid19-details or covid-19-test-info.broadinstitute.org and www.color.com/covid19-tos for additional warnings, limitations, and advisories regarding the Test.

(d) The parties acknowledge and agree that COVID-19 is a reportable disease and therefore Color shall promptly report, or shall direct its subcontractor(s) to promptly report, test results to the applicable federal, state, county, and local public health reporting agencies as required by Applicable Law.

(e) In no event shall one party be liable or otherwise responsible to the other party or any third party for any consequential, indirect, special, exemplary, punitive, or incidental damages, including but not limited to lost profits, loss of business, or any other commercial damage, regardless of the form of action or theory of liability. Furthermore, to the greatest extent permitted by Applicable Laws, the maximum liability of either party arising out of or relating to this Agreement, whether arising from any claim(s) based on breach of contract, tort, products liability, strict liability, warranty, or otherwise, shall in no case exceed the actual fees paid to Color for the relevant Tests, exclusive of aggregate Third Party Pass-Through Fees. Moreover, all of the limitations, disclaimers, and restrictions contained in Sections 6 and 7 shall be enforced even if they cause any remedy to fail of its essential purpose.

8. **Responsibilities and Compliance.** (a) Each party shall comply with all legal requirements applicable to its performance or receipt of Testing and other Services under this Agreement, including: (i) the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”); (ii) the Affordable Care Act; (iii) the Americans with Disabilities Act; (iv) applicable governmental reporting and disclosure requirements; and (v) if federal or state insurance programs are billed, the Medicare/Medicaid Anti-Kickback Statute and the Stark Law and related regulations. The parties agree that the terms set forth herein is the result of an arms’ length negotiation, both parties participated in its drafting, and is the pricing is at fair market value, and is not intended to provide any remuneration in cash or in kind for the referral of any patient.

(b) Client shall solely determine eligibility and frequency of Testing within its population, and Client shall cooperate with Color to develop a process through which Color can securely and reliably identify Eligible Individuals. Color hereby expressly disclaims any responsibility or liability for Eligible Individual eligibility criteria or Client’s use of Test results. As applicable, Client shall comply with all Applicable Laws in connection with eligibility criteria, availability of Testing Services, receipt and use of

Test results, and handling and transmission of Eligible Individual information to Color as provided for hereunder, including, Applicable Laws relating to patient privacy, the transmission of personally identifiable information, and non-discrimination in employment, insurance, and other benefits. To the extent Client requests Color to provide or make available Testing Services to Eligible Individuals under 18 years of age or who otherwise lack capacity to provide consent or are incompetent (each, a “**Minor/Incompetent EI**”), Client represents and warrants that Client has previously obtained, or will obtain prior to testing, consent from the parent/guardian or other duly authorized decision-maker of each such Minor/Incompetent EI to perform Testing Services (“**Guardian Consent**”) and authorization for Color to release the results of such Testing Services to Client for non-treatment purposes (“**Guardian Authorization**”). Client further represents and warrants that each such Guardian Consent and each such Guardian Authorization will be compliant with applicable state and federal laws, and agrees to provide copies of such Guardian Consents and Guardian Authorization to Color upon Color’s request (e.g. for regulatory audits).

(c) The parties agree that clinical records and results of Eligible Individuals related to the ordering of laboratory tests and/or test reports shall be regarded as protected health information. Both parties shall comply with all Applicable Laws regarding the use and disposition of such information, including the provisions of HIPAA. To the extent Services, or the disclosure of information to Client requires a HIPAA Authorization or other consent from an Eligible Individual to comply with HIPAA, Color shall not be obligated to perform Services, or to disclose such information to Client until it obtains the required authorization or consent. Accordingly, to the extent that Client receives any information from the Services, Client shall be solely responsible for any use it makes of such information for any purpose. Color hereby disclaims any liability arising from Client’s or any HCP’s use or disclosure of information provided in connection with the Services. Client shall not manipulate, aggregate, integrate, compile, merge, reorganize, regenerate or otherwise use the information and shall not provide the information to any person or entity, except as required or authorized by Applicable Laws and/or the Eligible Individual. The provisions of this paragraph shall survive the termination of this Agreement. Client acknowledges and agrees that Color, as a clinical laboratory certified under the Clinical Laboratory Improvements Act of 1988 and accredited by the Client of American Pathologists, in accordance with Applicable Law, must retain Data generated pursuant to this Agreement and may not destroy such Data for applicable retention periods.

9. Indemnification. (a) Color agrees to defend, indemnify, and hold harmless Client, its affiliates, its subcontractors, their respective successors and permitted assigns, and all of their respective directors, trustees, officers, employees, representatives, and agents (collectively, the “**Client Indemnitees**”) from and against any and all third party Claims (“**Claim**” and collectively “**Claims**” means: any claims, actions, suits, proceedings, demands, losses, fines, damages, costs, (including, reasonable attorneys’ fees, expert witness fees, and court costs), and other remedies of any kind or nature, whether based on tort, contract, warranty, products liability, strict liability, trade, regulatory, or other law) to the extent resulting from: Color’s negligence or willful misconduct hereunder, except to the extent such Claim relates to: (i) the use by Client, Eligible Individuals, or any third party of the Test results; or (ii) the negligence or willful misconduct by Client, an Eligible Individual, or any Client Indemnitee.

(b) Client agrees to defend, indemnify, and hold harmless Color, its affiliates, its subcontractors, their respective successors and permitted assigns, and all of their respective directors, trustees, officers, employees, representatives, and agents (“**Color Indemnitees**”) from and against any and all third party Claims to the extent resulting from: (i) any information or instructions that Client provides to Color; (ii) Client’s unauthorized disclosure of any Test results to any third party for any reason, or any unauthorized use by Client of any of the results provided hereunder; (iii) any failure of Client to comply with any Applicable Laws; or (iv) Client’s negligence or willful misconduct; in each of the foregoing cases, except to the extent any such Claim results from the negligence or willful misconduct of Color or any Color Indemnitee.

10. Term and Termination.

(a) This Agreement is effective as of the Effective Date and shall expire after the Term as set forth on the Cover Page, unless terminated earlier in accordance with the terms of this Agreement, or extended by mutual written agreement. In the event of a termination for any reason, Client shall pay Color for any Services rendered prior to the date of termination. Sections 3, 4, 5, 7, 8(a), 9, 10, and 11 shall survive any such termination or expiration of this Agreement. Upon termination or expiration of this Agreement, or upon Color’s written request, all confidential information of Color acquired by Client, including any and all copies thereof made by Client shall be destroyed. Notwithstanding anything to the contrary herein, the Minimum Upfront Fee, Additional Pre-Pay Test fees, and Annual Platform Services Fees paid are non-refundable.

(b) Each Party shall have the right to terminate this Agreement, upon written notice to the other as a result of a material breach of this Agreement by the other Party that is not cured by the breaching Party within thirty (30) days business days following written notice of such breach by the non-breaching Party.

11. General Provisions.

11.1 Includes. The words “includes”, “including” and similar terms used in this Agreement shall be construed as if followed by the words “without limitation”.

11.2 Assignment. Neither party may assign this Agreement without the other party’s prior written consent. Notwithstanding the foregoing, Color shall have the right to assign this Agreement to any affiliate or successor to substantially all of its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. This Agreement shall be binding on and inure to the benefit of each of the parties’ successors and permitted assigns, if any.

11.3 Relationship of the Parties. The relationship of the parties established by this Agreement is that of independent contractors, and nothing contained in this agreement shall be construed to constitute the parties as partners, joint venturers, co-owners, or participants in any joint or common undertaking, or to allow either party to act as an agent of the other or otherwise to create or assume any obligation on behalf of the other party.

11.4 Subcontractors. Client acknowledges and agrees that Color may engage subcontractors to perform Testing or other Services, as further described on Exhibit A. Color is responsible for all subcontractors that Color engages, and Color shall be liable to Client for all such subcontractors’ acts or omissions directly relating to this Agreement.

11.5 Severability; Waiver. If a court of competent jurisdiction finds any provision of this Agreement to be void, invalid, illegal or unenforceable, the provision will be limited, modified, or if necessary severed, to the extent necessary to eliminate its violability, invalidity, illegality, or unenforceability, and the other provisions hereof shall remain unaffected.

11.6 Force Majeure. A party’s failure to perform in timely fashion shall not be a breach of this Agreement if such failure to perform results from circumstances beyond the party’s reasonable control, including, but not limited to, labor disputes, civil disturbances, acts or non-actions of governmental authorities or suppliers, war, embargoes, severe weather, fire, earthquakes, Internet outage, Acts of God, or default of a common carrier.

11.7 Governing Law. This agreement shall be governed by and interpreted in accordance with the laws of the State of Delaware, excluding its conflicts of law principles.

11.8 Entire Agreement. This Agreement constitutes the entire agreement between the parties as to the subject matter hereof and supersedes all prior written and oral communications, agreements, representations, warranties, statements, negotiations, understandings, and proposals, with respect to such subject matters. For the avoidance of doubt, as between the parties and with respect to the Services hereunder, no passive, click-through or click-wrap agreement or general terms and conditions of either party referred to in purchase orders, Client portals such as procurement or payment portals, order confirmations, or elsewhere shall apply to either party to the extent such terms and conditions materially conflict with this Agreement, even if provided after the date of this Agreement and even if such terms would be deemed accepted by the parties’ acquiescence, course of conduct or otherwise. Color shall not be required to pay any additional fees to Client or any third-party service provider of Client in connection with submitting invoices or receiving payment by Client. No change shall be made to this Agreement except by written agreement of authorized representatives of both parties. This Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement.

11.19 Notices. Any notice or communication required or permitted to be given under this Agreement shall be served personally, sent by United States certified mail, sent by overnight delivery or courier or sent by email to the following address:

<p>If to Client: As set forth in the front page.</p>	<p>If to Color: Color Health, Inc. 831 Mitten Road, Suite 100 Burlingame, CA 94010 Email: legal-notices@color.com</p>
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Any change to the notice address listed above by a party must be given to the other party in the same manner as described in this section. The date of notice shall be the date of delivery if the notice is personally delivered or sent by overnight delivery or courier service, three (3) business days following the date of mailing if the notice is sent by United States certified mail or the date of transmission if the notice is sent by email. Each party agrees to maintain evidence of the respective notice method utilized.