

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Health Services Agency

BOARD AGENDA # *B-3

Urgent Routine

AGENDA DATE May 13, 2014

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of Agreements with the California Department of Public Health for the Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome Prevention, Care, AIDS Drug Assistance, and Medi-Cal Waiver Programs

STAFF RECOMMENDATIONS:

1. Approve the Agreement Amendment #13-20257 A01 with the California Department of Public Health for HIV/AIDS prevention services for the term of July 1, 2013 through December 31, 2015.
2. Approve the Agreement Amendment #13-20077 A01 with the California Department of Public Health for HIV/AIDS Care Program services for the term of July 1, 2013 through March 31, 2016.

(Continued on Page 2)

FISCAL IMPACT:

The Health Services Agency Public Health Division's Adopted Budget for Fiscal Year 2013-2014 is \$26.1 million. Funding relative to the current Fiscal Year for each of the four proposed contracts were included in the Adopted Budget; the total of which is \$328,164. Subsequent funding for the agreements which extends beyond the current fiscal year will be included in future fiscal year proposed budgets. There is no impact to current staff or to the County General Fund.

BOARD ACTION AS FOLLOWS:

No. 2014-230

On motion of Supervisor Withrow, Seconded by Supervisor O'Brien

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

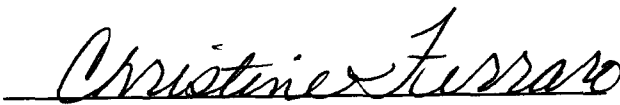
1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

STAFF RECOMMENDATIONS (Continued):

3. Approve the Agreement #13-20731 with the California Department of Public Health for AIDS Drug Assistance Program services for the term of July 1, 2013 through June 30, 2016.
4. Approve the Agreement #13-20975 with the California Department of Public Health for HIV/AIDS Medi-Cal Waiver Program for the term of January 1, 2014 through December 31, 2016.
5. Authorize the Health Services Agency Managing Director or her designee to sign and execute the Agreements and Amendments.

DISCUSSION:

There are four Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (HIV/AIDS) related agreements proposed for approval, each with different amounts of funding, different scopes of work, and each for different lengths of time.

1. HIV/AIDS PREVENTION PROGRAM AGREEMENT AMENDMENT
\$277,259
July 1, 2013 – December 31, 2015

The Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) Prevention Program Agreement provides State funds targeted to minimize new HIV infections and maximize the number of people with HIV infection who require access for appropriate care, treatment, support, and prevention services. This agreement provides funds for HIV testing, education, linkage to care, and partner services.

The HIV/AIDS Program is committed to determining the trends in HIV infections and developing planning strategies and interventions to interrupt the spread of the epidemic. The agreement provides funding for ongoing testing and early intervention for patients who are HIV positive, and providing access to care for those whose infections have progressed to AIDS.

In 2002, the California Legislature determined there was a need to report cases of HIV on the premise that the “availability of HIV data allows California to track the HIV epidemic and equitably distribute funding to support prevention, care and treatment services for those in greatest need”. (Source: Department of Public Health, Office of AIDS.)

This agreement with the State allows the Health Services Agency (HSA) to continue to offer primary and secondary prevention with HIV counseling and testing. The State of California Department of Public Health, Office of AIDS requires a County Board of Supervisors resolution in order to execute this agreement.

2. HIV/AIDS CARE PROGRAM AGREEMENT AMENDMENT
\$508,945
July 1, 2013 – March 31, 2016

The HIV/AIDS Care Program Contract agreement provides State funds targeted to minimize new HIV infections, maximize the number of people with HIV infection who require access for appropriate care, treatment, support, and prevention services; and reduce HIV/AIDS related health disparities. This contract provides funds for HIV medical and support care services.

The HIV/AIDS Program is committed to determining the extent and the trends in HIV infections and developing planning strategies and interventions to interrupt the spread of the epidemic. The agreement provides funding for ongoing testing and early intervention for patients who are HIV positive, while providing case management for those who have been identified as having AIDS.

In 2002, the California Legislature determined there was a need to report cases of HIV on the premise that the “availability of HIV data allows California to track the HIV epidemic and equitably distribute funding to support prevention, care and treatment services for those in greatest need”. (Source: Department of Public Health, Office of AIDS.)

The agreement from the State allows the HSA to continue to offer primary and secondary prevention, and case management for HIV infected clients. The State of California Department of Public Health Office of AIDS requires a County Board of Supervisors resolution in order to execute this Agreement.

3. AIDS DRUG ASSISTANCE PROGRAM AGREEMENT (“Site Contract”)
July 1, 2013 – June 30, 2016 Agreement

The Stanislaus County Health Services Agency (HSA) Public Health division has been providing enrollment services for California's Acquired Immune Deficiency Syndrome (AIDS) Drug Assistance program for approximately 14 years. ADAP was established in 1987 to assure that Human Immunodeficiency Virus (HIV) positive uninsured, and under-insured individuals have access to medication.

The purpose of this agreement is to support an enrollment process for eligible clients who reside in Stanislaus County. The State issues two agreements to support these services, a Standard agreement and a “Site Contract”. The Standard agreement was already approved by the Board of Supervisors on June 11, 2013 for services through June 20, 2015 and with funding in the amount of \$27,243. There is no separate funding associated with this pending Site Contract.

Currently, over 180 drugs are available through ADAP and more than 3,000 pharmacies statewide facilitate client access to medications at no or low cost to the client. Assuring treatment for those with HIV/AIDS improves quality of life and life expectancy. Access to medication also decreases the rate at which those with HIV progress to AIDS. Efficient implementation of the ADAP program depends on referral and enrollment of those with HIV/AIDS, thereby ensuring they have timely and convenient access to medications.

The State of California Department of Public Health Office of AIDS requires a County Board of Supervisors resolution in order to execute this Agreement.

4. MEDI-CAL WAIVER PROGRAM AGREEMENT

January 1, 2014 – December 31, 2016

Payment provisions are based on fees recouped from rendered clinical services.

The Medi-Cal Waiver Program (MCWP) is a comprehensive case management program providing home and community-based care to participants diagnosed with HIV/AIDS. This program is provided in lieu of placement in a nursing facility or hospital. MCWP is dedicated to providing services designated to allow persons with mid-to-late-stage HIV/AIDS to remain in their homes, stabilize their health, improve their quality of life, and avoid costly institutional care.

These services will continue through Fiscal Years 2014-2016 and Health Services Agency (HSA) will continue providing comprehensive case management services with special emphasis on outreach to populations, either by morbidity or mortality that are disproportionately affected by HIV/AIDS and reduce transmission of HIV through education and harm reduction. The State of California Department of Public Health, Office of AIDS requires a County Board of Supervisors resolution in order to execute this Agreement.

POLICY ISSUES:

Board approval of this contract promotes the Board's priorities of A Healthy Community as it promotes prevention and enables access to medically necessary services.

STAFFING IMPACT:

There is no staffing impact related to this request, as existing staff will perform the duties in the scope of work.

DEPARTMENTAL CONTACT:

Rebecca Nanyonjo, Associate Director, 209-558-6833

STATE OF CALIFORNIA
STANDARD AGREEMENT AMENDMENT
 STD 213A (Rev 8/03)

Check here if additional pages are added: 1 Page(s)

Agreement Number 13-20257	Amendment Number A01
Registration Number: LP131183	

- This Agreement is entered into between the State Agency and Contractor named below:
 State Agency's Name **California Department of Public Health** Also known as CDPH or the State
 Contractor's Name **County of Stanislaus** (Also referred to as Contractor)
- The term of this Agreement is: **July 1, 2013 through December 31, 2015**
- The maximum amount of this Agreement after this amendment is: **\$ 277,259**
Two Hundred Seventy Seven Thousand, Two Hundred Fifty Nine Dollars
- The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and Incorporated herein:

- Purpose of amendment:** This amendment increases the funding level and extends the term of this agreement by 2 years due to a revised state allocation formula for this program.
- Certain changes made in this amendment are shown as: Text additions are displayed in **bold and underline**. Text deletions are displayed as strike through text (i.e., ~~Strike~~).
- Paragraph 3 (maximum amount payable) on the face of the original STD 213 is increased by \$221,032 and is amended to read: ~~\$56,227 Fifty Six Thousand, Two Hundred Twenty Seven Dollars~~ **277,259** **(Two Hundred Seventy Seven Thousand, Two Hundred Fifty Nine Dollars.)**

(Continued on next page)

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		CALIFORNIA Department of General Services Use Only
Contractor's Name (If other than an individual, state whether a corporation, partnership, etc.) County of Stanislaus <i>Hegith Services Agency</i>		
By (Authorized Signature) <i>Mary Ann Lee</i>	Date Signed (Do not type) 5/14/14	
Printed Name and Title of Person Signing MARY ANN LEE MANAGING DIRECTOR		
Address 820 Scenic Drive, Modesto, CA 95350		
STATE OF CALIFORNIA		
Agency Name California Department of Public Health		<input checked="" type="checkbox"/> Exempt per: OOA Budget Act 2013
By (Authorized Signature) <i>Angela Salas</i>	Date Signed (Do not type) 5/21/14	
Printed Name and Title of Person Signing Yolanda Murillo, Chief, Contracts Management Unit		
Address 1616 Capitol Avenue, Suite 74.317, MS 1802, P.O. Box 997377, Sacramento, CA 95899-7377		

APPROVED AS TO FORM:

BY: *Marc Hartley* DATE: **5/5/14**
 Marc Hartley, Deputy County Counsel

- IV. Exhibit A – HIV Prevention Program, Scope of Work, is hereby replaced in its entirety with Exhibit A, A01, HIV Prevention Program Scope of Work.

“All references to Exhibit A, Scope of Work, in any exhibit incorporated into this agreement shall hereinafter be deemed to read, Exhibit A, A01, Scope of Work.”

- V. Exhibit B - Budget Detail and Payment Provisions, is hereby replaced in its entirety with Exhibit B, A01, Budget Detail and Payment Provisions.

“All references to Exhibit B, Budget Detail and Payment Provisions, in any exhibit incorporated into this agreement shall hereinafter be deemed to read Exhibit B, A01, Budget Detail and Payment Provisions.”

- VI. Exhibit B – Attachment II, Budget (Year 2) and Attachment III, Budget (Year 3), are hereby augmented to this agreement.

**Exhibit A - A01
HIV Prevention Program
Scope of Work**

1. Mission Statement

The goals of the California Department of Public Health, Office of AIDS (CDPH/OA) are: (1) to minimize new HIV infections; ~~and~~, (2) to maximize the number of people with HIV infection who access appropriate care, treatment, support, and prevention services; **and (3) reduce HIV/AIDS related health disparities**. The services required by the HIV Prevention Program Scope of Work (SOW) in this Cooperative Agreement Contract are consistent with, and are designed to support, these goals.

2. Service Overview

The Contractor agrees to administer the HIV Prevention Program (HPP) and to ensure the provision of HIV prevention services as described in this SOW. The Contractor may provide direct client services exclusively or subcontract all or part of the client services. The Contractor ensures that, if all or part of the client services is subcontracted to other service providers, all services provided by the subcontractor will be monitored by the Contractor in accordance with the HPP.

The Contractor will plan, develop, and ensure the delivery of prevention services to clients. Services should be designed to meet the identified needs of individuals that are HIV positive and/or at high-risk for HIV in the California Project Area (CPA).

The Local Health Jurisdiction (LHJ) will identify one HPP Coordinator who will attend the OAHIV Prevention Branch required meetings when convened.

3. Services to be Performed

Services must be consistent with the California HIV Prevention Program funded by the Centers for Disease Control and Prevention (CDC) PS12-1201 grant. In response to the National HIV/AIDS Strategy (NHAS) and CDC's PS12-1201 grant, OA aims to support the implementation of high impact prevention strategies which identify new positives, link them into quality HIV/AIDS medical care and support ~~HIV positive individuals with preventive services~~ **and provide partner services**. OA's prevention plan also includes structural interventions, such as condom distribution, and health care reform planning ~~and education on nonprescription syringe sale in pharmacies~~, which are is consistent with NHAS goals.

OA has developed the Tier I and Tier II system to help LHJs prioritize among the many evidenced-based approaches to HIV prevention currently required or recommended by the CDC. The Tier I and Tier II system is designed to provide flexibility for LHJs to make decisions that work at the local level, at the same time it prioritizes the evidence-based interventions that can best meet the goals of the NHAS.

LHJs must ensure that activities designated as Tier I are provided, using any resources available to the LHJ, before using OA prevention funding for Tier II activities (with the exception of Hepatitis C virus [HCV] testing). HCV antibody testing, while designated a Tier II activity, may be conducted by the LHJ without first ensuring that all Tier I activities are being conducted within the LHJ.

**Exhibit A - A01
HIV Prevention Program
Scope of Work**

Tier I Core Services:

All LHJs funded by OA's prevention cooperative agreement contract must meet monitoring and evaluation requirements set by OA and must provide these core services:

- a. ~~Targeted HIV testing to prioritized high-risk populations~~ **Provide targeted HIV testing when positivity yield is sufficient to warrant it.**
- b. Linkage-to-care (LTC) services for all newly diagnosed HIV positive individuals; and
- c. Partner Services.

Other Tier I Services:

- a. Routine, Opt-out HIV Testing in Healthcare Settings;
- b. Retention and Re-engagement in Care;
- c. HIV Medication Treatment Adherence;
- d. Prevention with Positives (PWP);
- e. Integrated Health Services;
- f. Syringe Services Programs; and
- g. Condom Distribution (Required).

Additionally LHJs must:

- a. Maintain an alternative test site (ATS). ATS testing must be anonymous and provided for free;
- b. Assign a staff member to attend to health care reform issues, for a proportion of time to be determined by the LHJ; and
- c. Meet the subsidiary requirements that support HIV testing, PS, and LTC services.

Optional Tier II Activities:

- a. HCV Testing;
- b. Behavioral Interventions for Prioritized High-risk Negative People; and
- c. Social Marketing, Media and Mobilization.

TIER I CORE SERVICES:

a. Targeted HIV Testing to Prioritized High-Risk Target Populations

1. LHJs shall administer HIV testing by providing anonymous and/or confidential HIV testing services (with or without counseling) to individuals at high risk for HIV. Testing services may include: assessment of client needs regarding HIV transmission; client-centered prevention counseling; risk-reduction planning; and referrals to other services. LHJs funded for testing in non-health care settings are required to: establish systems for linking newly diagnosed HIV positive or preliminarily positive clients into medical care with a verified medical visit; ensure that clients are offered PS; and establish a plan for referring clients to other prevention programs.
2. Individuals seeking testing services shall be informed about the validity and accuracy of the antibody test before consent to test is obtained. Written consent is required for testing in non-health care settings; oral consent is required for ATS testing; and oral consent is allowed

**Exhibit A - A01
HIV Prevention Program
Scope of Work**

for testing in health care settings. All individuals tested with OA funds in non-health care settings shall be given the results of their test in person.

3. Funded agencies must ensure all HIV counseling interventions are provided by staff members who have successfully completed the Basic Counselor Skills Training. In addition, test kit operators are required to complete an annual competency assessment test to maintain their certification for testing client samples.
4. All funded LHJs must ensure that all contracted testing sites maintain appropriate documentation. This includes the LHJ's written protocols for the local testing program, signed statements of confidentiality by staff, testing forms, invoices, etc. All documentation must be maintained for three years plus the current year.
5. Written quality assurance plans are required by sites conducting point-of-care rapid HIV tests waived under the federal Clinical Laboratory Improvement Act (CLIA). These plans must be submitted to OA for review by the Testing Specialist for comprehensiveness and compliance with State and Federal requirements. **Updated plans must be submitted anytime there are significant changes, such as adding HCV testing.**
6. LHJs must increase the number of newly identified HIV positive tests by at least 0.1 percent annually.
7. The contractor must maintain a referral list with contact information. The referral list must be updated annually.

b. Program Description and Other Requirements

The contractor shall set up and enter data into the CDPH/OA's Local Evaluation Online (LEO) process monitoring system for all testing and Health Education/Risk Reduction (HE/RR) activities.

1. Activities will be documented by:
 - a. Completing the appropriate CDPH/OA LEO data forms;
 - b. Entering initial client data into the LEO system within 5 business days of each client encounter; and
 - c. Completing and closing each client record within 3 months of the initial client encounter.

c. Linkage to Care Services (LTC) for all Newly Diagnosed HIV Positive Individuals

1. All LHJs that receive OA prevention funds are required to provide LTC.
2. LTC is the process of assisting newly HIV diagnosed persons to enter into HIV medical care. LTC is a core activity required of all OA-funded HIV testing sites in both medical and non-medical settings. **Contractors may offer LTC services to other medical providers as well.**
3. LTC is considered to be achieved when a newly diagnosed HIV positive person is seen by a health care provider (e.g., physician, physician assistant, nurse practitioner) to receive medical

**Exhibit A - A01
HIV Prevention Program
Scope of Work**

care for his or her HIV infection. The standard set by Health Resources and Services Administration (HRSA) **and the indicator defined by the CDC** is that the newly HIV diagnosed individual attends an HIV medical appointment within 90 days of diagnosis.

4. Administration (HRSA) is that the newly HIV diagnosed individual attends an HIV medical appointment within 90 days of diagnosis.
5. HIV testing coordinators must establish policies and procedures describing a system for referring individuals with preliminary and confirmed HIV positive test results to a medical provider for HIV care. In designing this system, coordinators should include identification of HIV care providers, referrals to medical care, and verification of client's attendance at their first appointment.
6. A variety of different mechanisms may be used to verify, including but not limited to, verified medical visit forms, kickback cards, and/or client self-report. All verified visits must be entered on the HIV Counselor Information Form (CIF) and entered into LEO data collection system.

d. Partner Services (PS)

1. All LHJs that receive OA prevention funds are required to provide PS.
2. LHJs must offer PS to all people newly diagnosed as HIV positive, as well as, those living with HIV who have participated in recent risky behavior and may have exposed others to HIV. LHJ's should assess PS activities and outcomes, and implement provider outreach programs to enhance PS with key community providers.
3. Every LHJ must maintain a staff member to coordinate the PS activities of that LHJ. If an LHJ has the infrastructure to only provide an offer of PS, collaboration with a Disease Intervention Specialist from the State STD Control Branch must be established and maintained for comprehensive PS activities.
4. Funds allocated for PS may be used for any activities supporting PS including staff salaries and benefits, travel, training, and resources for third-party notification. PS allocations may not be used to pay for HIV testing, counseling, or other prevention activities.
5. All LHJs shall maintain a comprehensive written PS program plan that provides for routine review of PS staff performance with appropriate standards, PS protocols/quality assurance plans, and the availability of and referral to HIV testing, prevention services, STD screening, HCV testing, and HIV medical care as appropriate.
6. Local programs should track the number, type and outcomes of PS activities provided by entering data into LEO and review this data routinely.

**Exhibit A - A01
HIV Prevention Program
Scope of Work**

OTHER TIER I SERVICES:

a. HIV Testing in Healthcare Settings

1. LHJs that elect to fund HIV Testing in Healthcare Settings will work with local health care settings on ways they can implement and increase routine, opt-out HIV testing. These settings may include but are not limited to hospital emergency departments and primary care clinics in community health care settings.
2. Funding for routine, opt-out HIV testing cannot be used to pay for HIV testing staff.
3. This funding can only pay for HIV testing (i.e., test kits and other testing costs) when a patient has no other payer for health care services (OA is the payer of last resort).
4. Documentation for routine, opt-out HIV testing includes completing a Health Care HIV Test Form for all preliminary or confirmed positive results, and entering that information in the LEO system. Required data for HIV-negative results can be retrieved from electronic medical records and submitted to OA electronically. The Prevention Research and Evaluation Section will work with any providers conducting routine, opt-out testing to develop a system to report required data.

b. Retention and Re-engagement into Care

1. Retention and Re-engagement in Care identifies HIV positive patients vulnerable to not attending HIV medical appointments routinely, as well as, out-of-treatment HIV positive individuals, and works with the HIV positive individual to stay in or return to HIV medical care.
2. LHJ's conducting these services are responsible for determining the most effective approaches for achieving active collaboration between local prevention and care providers to provide retention and re-engagement services. In order to decrease duplication of effort and ensure maximum impact of retention and re-engagement interventions, LHJs that fund or provide Retention and Re-engagement in Care services will demonstrate active collaboration and coordination with Care sites.
3. OA's LEO or AIDS Regional Information and Evaluation System (ARIES) must be used to document and record Retention and Re-engagement in Care activities.

c. HIV Medication Treatment Adherence

1. HIV Medication Treatment Adherence services support the appropriate and consistent use of antiretroviral (ARV) medicines to maximize their benefits in sustaining health and suppressing viral load.
2. OA will fund HIV medication treatment adherence interventions to any patient(s) living with HIV having difficulty taking ARVs as prescribed.

**Exhibit A - A01
HIV Prevention Program
Scope of Work**

3. LHJs that elect to fund or provide HIV Medication Treatment Adherence should include collaboration with health care providers, medical case managers, and others working with HIV positive individuals. HIV Medication Treatment Adherence activities should include:
 - Regular screening of HIV infected individuals to determine whether they are on ARV therapy;
 - Routine assessment of treatment adherence using the adherence questions listed on the LEO HE/RR form or in ARIES, as well as monitoring of viral load suppression to identify individuals who would benefit from treatment adherence interventions; and
 - Appropriate referrals for those not on ARV therapies and for those identified as having challenges in maintaining adherence to their HIV medication requirements. This may include delivering treatment adherence interventions, consultation with health care providers or referral to HIV medication treatment adherence services.
4. OA prevention funds cannot be used to pay for medications or medical services. Purchasing supplies to assist with medication adherence is an acceptable expense when used within treatment adherence intervention programs.
5. OA requires LHJs to use LEO or ARIES to track service utilization by clients referred to treatment adherence interventions.

d. Prevention with Positives

1. The goal of Risk Assessment, Linkage to Services and Behavioral Interventions for HIV Positive Individuals (PWP Services) is to increase the number of Ryan White-funded clinics or HIV care providers providing a comprehensive risk screening program and, to the extent that resources are available, initiate behavioral, structural or biomedical interventions for HIV positive people, or develop a referral plan for community-based PWP interventions.
2. LHJs which elect to fund or conduct PWP Services will select at least one Ryan White-funded clinic or HIV care provider who can initiate behavioral risk screening within their medical setting.
3. All sites conducting PWP services will administer the LEO Group Self-Administered Questionnaire (GSAQ) and the Substance Abuse and Mental Illness Symptom Screener (SAMISS) to HIV positive individuals and enter the results in LEO and ARIES.
4. For LHJs that fund HIV behavioral interventions, selected interventions must be **CDC supported** evidence-based and designed for HIV positive people or HIV positive people and their sexual/needle sharing partners. **If other evidence-based interventions are adapted to the population, documentation of the adaptation must be submitted to OA for approval prior to implementation.**

**Exhibit A - A01
HIV Prevention Program
Scope of Work**

5. If a site choose to refer clients at risk of transmitting HIV to community-based HIV behavioral interventions, those interventions must also be **CDC supported** evidence-based and designed to target HIV positive or serodiscordant relationships. If other evidence-based interventions are adapted to the population, documentation of the adaptation should be submitted to OA for approval **prior to implementation**.
6. In addition to HIV behavioral interventions, LHJs providing PWP services must identify and refer to culturally appropriate mental health and substance use services as needed.
7. All staff members who facilitate evidence-based interventions must have completed training in the intervention. Supervisors must monitor and ensure that the intervention is administered with fidelity and follow the curriculum and intervention activities as defined by the intervention.
8. OA's LEO or ARIES should be used to document and record client assessments and referrals. HIV Behavioral Interventions will be recorded and monitored using the LEO system. ~~All evaluation required by evidence based interventions must be completed and be maintained within LEO.~~

e. Integrated Health Services

1. Activities for integration of screening for and monitoring of Hepatitis, TB, and STDs for HIV positive individuals will be determined by each LHJ and will vary depending on the needs and opportunities within each LHJ. Activities may include, but are not limited to:
 - Providing continuing medical education highlighting the benefits of compliance with recommended clinical monitoring to increase staff integration of screening;
 - Using ARIES or electronic health records to document clinical testing of medical case management clients and Ryan White clinic patients as appropriate; and/or
 - Supporting client education that increases awareness of clinical laboratory monitoring standards and encouraging clients to talk with their health care providers about exposure or transmission risks of Hepatitis, TB, and STDs.
2. OA funding cannot be used to pay for clinical laboratory tests, except for HIV testing and Hepatitis screening.
3. LHJs are required to report on their activities in their bi-annual progress reports.

f. Syringe Services Programs

1. LHJs may use their OA HIV prevention funds to:
 - Support efforts to increase proper syringe disposal among Injection Drug Users (IDUs);

**Exhibit A - A01
HIV Prevention Program
Scope of Work**

- Support local non-prescription syringe sales in pharmacies: this may take the form of working to increase the number of pharmacies providing non-prescription syringe sales and/or encouraging IDUs to purchase sterile equipment in pharmacies which provide non-prescription syringe sales. Alternately or additionally, LHJs may provide educational literature or training about recent changes in pharmacy practice to law enforcement, pharmacy staff, IDUs and health and social service professionals who work with IDUs;
- Support policy work necessary to facilitate structural change to expand access to sterile syringes and/or improve sharps disposal among IDUs, as long as the work does not include efforts to influence state, federal or local law.

2. LHJs may not use their OA HIV prevention funds to:

- purchase needles and syringes;
- fund staff time used specifically to distribute needles or syringes;
- pay for delivery modes such vehicles or rent for fixed sites used specifically for distributing needles and syringes; and/or
- conduct any activity designed to influence legislative change at the Local, State, or Federal level.

g. Condom Distribution (Required)

1. The condom distribution program requires LHJs to use OA epidemiologic data as well as LHJs local knowledge and resources to enroll venues into the condom distribution program, where they will receive condoms and educational material to distribute to high-risk target populations in locations where HIV/AIDS is most prevalent.
2. In order for a venue to be eligible for participation in the condom distribution program, they must: 1) provide their services in a zip code that has identified HIV/AIDS cases; and 2) have a clientele (whole or partial) that is made up of the targeted population.
3. LHJs will maintain venues previously enrolled in the condom distribution program, add additional venues when possible, and replace venues if former venues stop participating in the program.
4. To enroll a new venue, the LHJ must fill out the *Participating Venue Information (PVI)* form. There is no limit to how many eligible venues each LHJ can have participating in the program.
5. Condom orders cannot be placed by an LHJ or another entity on behalf of the participating venue. Condom orders cannot be placed by an LHJ for distribution at a one-time event, such as health fairs, workshops, rallies or other presentations unless the events specifically target OA's priority populations and are part of the LHJs HE/RR prevention interventions.
6. LHJs must include information about their condom distribution plans in their bi-annual progress reports.

**Exhibit A - A01
HIV Prevention Program
Scope of Work**

TIER II SERVICES:

Please note that no more than 25% of OA funds may be used for Tier II activities.

a. Hepatitis C Testing

1. OA funding may be used to offer HCV testing to clients identified by the assessment process to be at risk for HCV. Although HCV testing is a Tier II activity, LHJs may conduct this activity without implementing all Tier I activities.
2. OA funds may be used for HCV laboratory tests, HCV rapid tests, and Home Access kits.
3. OA will provide training **to new HIV test counselors** for the rapid CLIA-waived HCV and combination rapid HIV/HCV tests. HIV counselors must be certified prior to administering the new HCV rapid test. **Supervisors who have been trained by OA will provide training to their current HIV counselors.** Additionally, **current** HIV counselors must take the University of California San Francisco, Alliance Health Project on-line HCV training.
4. Trained HIV test counselors who are authorized in California to perform rapid CLIA-waived HIV tests may also perform rapid CLIA-waived HCV and combination rapid HIV/HCV tests. HIV test counselors performing rapid CLIA-waived HCV tests or rapid combination HIV/HCV tests, including those tests administered by finger stick, will need to meet the same performance and training requirements as that for rapid CLIA-waived HIV testing.
5. HCV test information must be collected on the CIF and entered into LEO.
6. The Contractor can integrate HIV and HCV testing services to increase the number of IDUs and ~~Men who have Sex with Men (MSMs)~~ who receive HIV testing services and learn their HIV status by offering HCV screening in coordination with HIV testing. CDPH/OA will allow IDU and ~~MSM~~ clients to test only for HCV if they choose not to take an HIV test.

e. Behavioral Interventions for Prioritized High-risk Negative People

1. The priority high-risk negative populations for the California project area are:
 - MSM, including MSM/IDU with strong emphasis on African-American and Latino MSM;
 - IDUs;
 - Transgender Individuals; and
 - High-Risk Negative Individuals with Sexual and/or Injection-sharing HIV positive or MSM partners.
2. LHJs may provide high-risk HIV negative populations with evidence-based HIV behavioral interventions to reduce the rate of new HIV infection within identified high-risk target populations. Behavioral interventions may include:
 - Targeted prevention activities (TPA) for high-risk HIV-negative persons;

**Exhibit A - A01
HIV Prevention Program
Scope of Work**

- Individual level interventions (ILI); **and**
 - Group level interventions (GLI); **and**
 - ~~Comprehensive Risk Counseling and Services (CRCS) for individuals with multiple health needs.~~
3. Intervention providers must screen potential participants prior to starting the intervention to ensure participants are part of intended target population, and divert lower risk and non-target population individuals to alternative resources. OA funds should not be used to support interventions for low-risk negatives.
 4. All OA-funded behavioral interventions must be recorded in LEO.

f. Social Marketing, Media and Mobilization

1. OA has chosen the following health messages for social marketing activities, media, and mobilization activities:
 - Benefits of early detection of HIV infection;
 - Need for routine and regular HIV health care;
 - Benefits of ARV therapy for health of people living with HIV;
 - Role of suppressed viral load in reducing HIV transmission;
 - Benefits of integrated screening for HIV, TB, STDs, and Hepatitis;
 - Value of initial and ongoing PS;
 - Information about Community Viral Load; and
 - Emerging messages from CDC or OA.
2. Messaging must address one or more of the health messages above and be targeted to HIV positive people, or priority high-risk negative populations as defined by OA.
3. Due to limited resources, LHJs should choose campaigns that have already been developed and demonstrated effective. LHJs choosing to conduct social marketing, media, or mobilization activities must submit a plan to OA **prior to starting a campaign**. The plan should include a definition of the health issue being addressed and the rationale for its selection. The plan should also describe the health messages to promote Testing, HIV Care, ARV therapy, PS, integration of STD, hepatitis, TB screening, and PS into HIV services, as well as the formative work planned to ensure community participation in the campaign development. Monitoring and evaluation activities must also be included in the plan. No LHJ's may create new material until after documentation of a search for pre-existing material and justification for developing new material is submitted to and approved by OA.
4. Progress on activities will be clearly documented in bi-annual progress reports submitted to OA, as well as entered into LEO.

**Exhibit A - A01
HIV Prevention Program
Scope of Work**

4. Reporting Requirements

A. Progress Reports

Progress Reports are required on a bi-annual basis, and must be submitted to LHJ's assigned HIV Operations Advisor via e-mail. The progress reports ~~for this prevention contract will cover the six months of the contract.~~ **The first report covers the first six months of the contract term; from July ~~January~~ 1, 2013 ~~2014~~ to December 31, 2013 ~~June 30, 2014~~.** The ~~This~~ report will be ~~is~~ due on February ~~August~~ 15, 2014. **The second report covers July 1, 2014 through December 31, 2014 and is due on February 15, 2015. Progress reports are due August 15th and February 15th for each six month term for the duration of this agreement.**

The progress reports should address, 1) all applicable services performed in Tier I and/or Tier II, 2) required information as outlined in the **Prevention Program Guidance** ~~IPP guidance (click here for Information for Program Planning (IPP))~~, and 3) relevant follow-up documentation for items identified In site visits, technical assistance and communication between OA and the LHJ.

LHJs must report on all activities that either the LHJ or subcontracted agencies have implemented.

The progress report must follow the guidance instructions that will be provided in the progress report template.

5. Project Representatives

A. The project representative during the term of this agreement will be:

<u>California Department of Public Health</u> <u>Jill Harden</u> <u>Telephone: (916) 445-2561</u> <u>Fax: (916) 449-5909</u> <u>Email: Jill.Harden@cdph.ca.gov</u>	<u>County of Stanislaus</u> <u>Jessica Montoya-Juarez</u> <u>Telephone: (209) 558-4800</u> <u>Fax: (209) 558-4905</u> <u>Email: Jmontoya@schsa.org</u>
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B. Direct all inquiries to:

<u>California Department of Public Health</u> <u>Office of AIDS</u> <u>Attention: Jill Harden</u> <u>P.O. Box 997426, MS 7700</u> <u>Sacramento, CA 95899-7426</u> <u>Telephone: (916) 445-2561</u> <u>Fax: (916) 449-5909</u> <u>Email: Jill.Harden@cdph.ca.gov</u>	<u>County of Stanislaus</u> <u>Attention: Jessica Montoya-Juarez</u> <u>820 Scenic Drive</u> <u>Modesto, CA 95350</u> <u>Telephone: (209) 558-4800</u> <u>Fax: (209) 558-4905</u> <u>Email: Jmontoya@schsa.org</u>
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C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.

Exhibit B – A01
Budget Detail and Payment Provisions

1. Invoicing and Payment

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the attached budget.
- B. Invoices must include the Agreement Number and Program Name and must be submitted not more frequently than monthly in arrears. Each invoice for the quarter shall be submitted for payment no more than thirty (30) calendar days following the close of each quarter, unless an alternate deadline is agreed to in writing by the program contract manager. Direct all inquiries to:

Invoice Desk
California Department of Public Health
Office of AIDS
MS 7700
1616 Capitol Avenue, Suite 616
P.O. Box 997426
Sacramento, CA 95899-7426

- C. Invoices shall:
 - 1) Submit on Contractor letterhead and signed by an authorized representative, certifying that the expenditures claimed represent actual expenses for the service performed under this contract.
 - 2) Identify contract agreement number.
 - 3) Identify the billing and/or performance period covered by the invoice.
 - 4) Itemize costs for the billing period in the same or greater level of detail as indicated in this agreement. Subject to the terms of this agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by CDPH.

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

Exhibit B – A01
Budget Detail and Payment Provisions

4. Amounts Payable

A. The amounts payable under this agreement shall not exceed:

- 1) \$ 56,227 for the budget period of 07/01/13 through 12/31/13.
- 2) \$ 110,516 for the budget period of 01/01/14 through 12/31/14.
- 3) \$ 110,516 for the budget period of 01/01/15 through 12/31/15.

B. Reimbursement shall be made for allowable expenses up to the amount annually encumbered commensurate with the state fiscal year in which services are performed and/or goods are received.

5. Timely Submission of Final Invoice

A. A final undisputed invoice shall be submitted for payment no more than sixty (60) calendar days following the expiration or termination date of this agreement, unless a later or alternate deadline is agreed to in writing by the program contract manager. Said invoice should be clearly marked "Final Invoice", indicating that all payment obligations of the State under this agreement have ceased and that no further payments are due or outstanding. The State may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written State approval of an alternate final invoice submission deadline.

B. The Contractor is hereby advised of its obligation to submit to the state, with the final invoice, a completed copy of the "**Contractor's Release (Exhibit F)**".

6. Allowable Line Item Shifts

A. Subject to the prior review and approval of the State, line item shifts of up to fifteen percent (15%) of the annual contract total, not to exceed a maximum of one hundred thousand (\$100,000) annually are allowed, so long as the annual agreement total neither increases nor decreases.

The \$100,000 maximum limit shall be assessed annually and automatically adjusted by the State in accordance with cost-of-living indexes. Said adjustments shall not require a formal agreement amendment. The State shall annually inform the Contractor in writing of the adjusted maximum.

B. Line item shifts meeting this criteria shall not require a formal agreement amendment.

C. The Contractor shall adhere to State requirements regarding the process to follow in requesting approval to make line item shifts.

D. Line item shifts may be proposed/requested by either the State or the Contractor.

7. Expense Allowability / Fiscal Documentation

A. Invoices, received from the Contractor and accepted for payment by the State, shall not be deemed evidence of allowable agreement costs.

Exhibit B – A01
Budget Detail and Payment Provisions

- B. Contractor shall maintain for review and audit and supply to CDPH upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.
- C. If the allowability of an expense cannot be determined by the State because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the State. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.

8. Recovery of Overpayments

- A. Contractor agrees that claims based upon the terms of this agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by the State by one of the following options:
 - 1) Contractor's remittance to the State of the full amount of the audit exception within 30 days following the State's request for repayment;
 - 2) A repayment schedule which is agreeable to both the State and the Contractor.
- B. The State reserves the right to select which option, as indicated above in paragraph A, will be employed and the Contractor will be notified by the State in writing of the claim procedure to be utilized.
- C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 days after Contractor's receipt of the State's demand for repayment.
- D. If the Contractor has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If the Contractor loses the final administrative appeal, Contractor shall repay, to the State, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues from the Contractor's first receipt of State's notice requesting reimbursement of questioned audit costs or disallowed expenses.

Exhibit B - Attachment II
HIV Prevention Program
Budget (Year 2)
January 1, 2014 to December 31, 2014

A. PERSONNEL	\$99,084
B. OPERATING EXPENSES	\$950
C. CAPITAL EXPENDITURES	\$574
D. OTHER COSTS	\$0
E. INDIRECT COSTS (Up to 15% of Personnel)	\$9,908
TOTAL BUDGET	\$110,516

Exhibit B - Attachment III
HIV Prevention Program
Budget (Year 3)
January 1, 2015 to December 31, 2015

A. PERSONNEL	\$99,084
B. OPERATING EXPENSES	\$950
C. CAPITAL EXPENDITURES	\$574
D. OTHER COSTS	\$0
E. INDIRECT COSTS (Up to 15% of Personnel)	\$9,908
TOTAL BUDGET	\$110,516

CCC-307

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i> Stanislaus County Health Services Agency		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i> Mary Ann Lee, Managing Director		
<i>Date Executed</i>	<i>Executed in the County of</i> Stanislaus	

CONTRACTOR CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations,

or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

- 1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

- 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

STATE OF CALIFORNIA
STANDARD AGREEMENT AMENDMENT
 STD 213A (Rev 6/03)

Check here if additional pages are added: 1 Page(s)

Agreement Number 13-20077	Amendment Number A01
Registration Number: <u>PP1309901</u>	

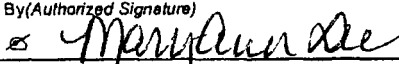
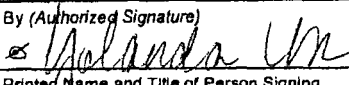
1. This Agreement is entered into between the State Agency and Contractor named below:

State Agency's Name California Department of Public Health	Also known as CDPH or the State
Contractor's Name County of Stanislaus	(Also referred to as Contractor)
2. The term of this Agreement is: July 1, 2013 through March 31, 2016
3. The maximum amount of this Agreement after this amendment is: \$ 508,945
Five Hundred Eight Thousand, Nine Hundred Forty Five Dollars
4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:
 - I. **Purpose of amendment:** This amendment increases the funding level and extends the term of this agreement by 2 years, due to a revised state allocation formula for this program.
 - II. Certain changes made in this amendment are shown as: Text additions are displayed in **bold and underline**. Text deletions are displayed as strike through text (i.e., ~~Strike~~).
 - III. Paragraph 3 (maximum amount payable) on the face of the original STD 213 is increased by \$397,964 and is amended to read: ~~\$110,981 One Hundred Ten Thousand, Nine Hundred Eighty One Dollars~~ **\$508,945 (Five Hundred Eight Thousand, Nine Hundred Forty Five Dollars)**.

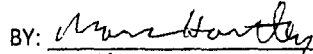
(Continued on next page)

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR	CALIFORNIA Department of General Services Use Only
Contractor's Name (If other than an individual, state whether a corporation, partnership, etc.) County of Stanislaus	
By (Authorized Signature) 	Date Signed (Do not type) 5/14/14
Printed Name and Title of Person Signing MARY ANNE LEE MANAGING DIRECTOR,	
Address Stanislaus Health Services Agency 820 Scenic Drive, Modesto, CA 95350 <i>Health Svcs. Agency</i>	
STATE OF CALIFORNIA	
Agency Name California Department of Public Health	
By (Authorized Signature) 	Date Signed (Do not type) 6/4/14
Printed Name and Title of Person Signing Yolanda Murillo, Chief, Contracts Management Unit	
Address 1616 Capitol Avenue, Suite 74.317, MS 1802, P.O. Box 997377, Sacramento, CA 95899-7377	
<input checked="" type="checkbox"/> Exempt per: OA Budget Act 2013	

APPROVED AS TO FORM:

BY:  DATE: 5/4/14
 Marc Hartley, Deputy County Counsel

- IV. Exhibit B - Budget Detail and Payment Provisions, is hereby replaced in its entirety with Exhibit B, A01, Budget Detail and Payment Provisions.

“All references to Exhibit B, Budget Detail and Payment Provisions, in any exhibit incorporated into this agreement shall hereinafter be deemed to read Exhibit B, A01, Budget Detail and Payment Provisions.”

- V. Exhibit B – Attachment I, AMENDED Budget (Year 1), Attachment II, Budget (Year 2) and Attachment III, Budget (Year 3), are hereby augmented to this agreement.

Exhibit B – A01
Budget Detail and Payment Provisions

1. Invoicing and Payment

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the attached budget.
- B. Invoices must include the Agreement Number and Program Name and must be submitted not more frequently than monthly in arrears. Each invoice for the quarter shall be submitted for payment no more than ~~thirty (30)~~ **forty-five (45)** calendar days following the close of each quarter, unless an alternate deadline is agreed to in writing by the program contract manager. Direct all inquiries to:

Invoice Desk
California Department of Public Health
Office of AIDS
MS 7700
1616 Capitol Avenue, Suite 616
P.O. Box 997426
Sacramento, CA 95899-7426

- C. Invoices shall:
- 1) Submit on Contractor letterhead and signed by an authorized representative, certifying that the expenditures claimed represent actual expenses for the service performed under this contract.
 - 2) Identify contract agreement number.
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 - 4) Itemize costs for the billing period in the same or greater level of detail as indicated in this agreement. Subject to the terms of this agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by CDPH.

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

4. Amounts Payable

Exhibit B – A01
Budget Detail and Payment Provisions

A. The amounts payable under this agreement shall not exceed:

- 1) ~~\$140,984~~ \$135,799 for the budget period of 07/01/13 through 03/31/14
- 2) \$186,573 for the budget period of 04/01/13 through 03/31/15
- 3) \$186,573 for the budget period of 04/01/13 through 03/31/16

B. Reimbursement shall be made for allowable expenses up to the amount annually encumbered commensurate with the state fiscal year in which services are performed and/or goods are received.

5. Timely Submission of Final Invoice

- A. A final undisputed invoice shall be submitted for payment no more than sixty (60) calendar days following the expiration or termination date of this agreement, unless a later or alternate deadline is agreed to in writing by the program contract manager. Said invoice should be clearly marked "Final Invoice", indicating that all payment obligations of the State under this agreement have ceased and that no further payments are due or outstanding. The State may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written State approval of an alternate final invoice submission deadline.
- B. The Contractor is hereby advised of its obligation to submit to the state, with the final invoice, a completed copy of the "**Contractor's Release (Exhibit F)**".

6. Allowable Line Item Shifts

A. Subject to the prior review and approval of the State, line item shifts of up to fifteen percent (15%) of the annual contract total, not to exceed a maximum of one hundred thousand (\$100,000) annually are allowed, so long as the annual agreement total neither increases nor decreases.

The \$100,000 maximum limit shall be assessed annually and automatically adjusted by the State in accordance with cost-of-living indexes. Said adjustments shall not require a formal agreement amendment. The State shall annually inform the Contractor in writing of the adjusted maximum.

- B. Line item shifts meeting this criteria shall not require a formal agreement amendment.
- C. The Contractor shall adhere to State requirements regarding the process to follow in requesting approval to make line item shifts.
- D. Line item shifts may be proposed/requested by either the State or the Contractor.

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- A. Invoices, received from the Contractor and accepted for payment by the State, shall not be deemed evidence of allowable agreement costs.
- B. Contractor shall maintain for review and audit and supply to CDPH upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.

Exhibit B – A01
Budget Detail and Payment Provisions

- C. If the allowability of an expense cannot be determined by the State because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the State. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.

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- A. Contractor agrees that claims based upon the terms of this agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by the State by one of the following options:
 - 1) Contractor's remittance to the State of the full amount of the audit exception within 30 days following the State's request for repayment;
 - 2) A repayment schedule which is agreeable to both the State and the Contractor.
- B. The State reserves the right to select which option, as indicated above in paragraph A, will be employed and the Contractor will be notified by the State in writing of the claim procedure to be utilized.
- C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 days after Contractor's receipt of the State's demand for repayment.
- D. If the Contractor has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If the Contractor loses the final administrative appeal, Contractor shall repay, to the State, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues from the Contractor's first receipt of State's notice requesting reimbursement of questioned audit costs or disallowed expenses.

**Exhibit B - Attachment I
 HIV Care Program
 AMENDED Budget (Year 1)
 July 1, 2013 through March 31, 2014**

	Original HCP Budget	Original MAI Budget	Original Total Budget	<u>A01 HCP Amendment</u>	<u>A01 MAI Amendment</u>	<u>A01 Total Budget</u>
A. PERSONNEL	\$74,661	\$0	\$74,661	<u>\$20,295</u>	<u>\$0</u>	<u>\$94,956</u>
B. OPERATING EXPENSES	\$750	\$0	\$750	<u>\$0</u>	<u>\$0</u>	<u>\$750</u>
C. CAPITAL EXPENDITURE	\$0	\$0	\$0	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
D. OTHER COSTS	\$24,898	\$0	\$24,898	<u>\$5,699</u>	<u>\$0</u>	<u>\$30,597</u>
E. INDIRECT COSTS (Up to 15% of Personnel)	\$10,672	\$0	\$10,672	<u>(\$1,176)</u>	<u>\$0</u>	<u>\$9,496</u>
TOTAL BUDGET	\$110,981	\$0	\$110,981	<u>\$24,818</u>	<u>\$0</u>	<u>\$135,799</u>

Exhibit B - Attachment II
HIV Care Program
Budget (Year 2)
April 1, 2014 through March 31, 2015

	HCP Budget	MAI Budget	Total Budget
A. PERSONNEL	\$130,661	\$0	\$130,661
B. OPERATING EXPENSES	\$3,000	\$0	\$3,000
C. CAPITAL EXPENDITURES	\$0	\$0	\$0
D. OTHER COSTS	\$39,846	\$0	\$39,846
E. INDIRECT COSTS (Up to 15% of Personnel)	\$13,066	\$0	\$13,066
TOTAL BUDGET	\$186,573	\$0	\$186,573

Exhibit B - Attachment III
HIV Care Program
Budget (Year 3)
April 1, 2015 through March 31, 2016

	HCP Budget	MAI Budget	Total Budget
A. PERSONNEL	\$130,661	\$0	\$130,661
B. OPERATING EXPENSES	\$3,000	\$0	\$3,000
C. CAPITAL EXPENDITURES	\$0	\$0	\$0
D. OTHER COSTS	\$39,846	\$0	\$39,846
E. INDIRECT COSTS (Up to 15% of Personnel)	\$13,066	\$0	\$13,066
TOTAL BUDGET	\$186,573	\$0	\$186,573

CCC-307

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i> Stanislaus County Health Services Agency		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i> Mary Ann Lee, Managing Director		
<i>Date Executed</i>	<i>Executed in the County of</i> Stanislaus	

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations,

or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

- 1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

- 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

Darfur Contracting Act

Pursuant to Public Contract Code (PCC) sections 10475-10481, the Darfur Contracting Act's intent is to preclude State agencies from contracting with scrutinized companies that do business in the African nation of Sudan. A scrutinized company is a company doing specified types of business in Sudan as defined in PCC section 10476. Scrutinized companies are ineligible to, and cannot, contract with a State agency for goods or services (PCC section 10477(a)) unless obtaining permission from the Department of General Services according to the criteria set forth in PCC section 10477(b).

Therefore, to be eligible to contract with the California Department of Public Health, please initial one of the following three paragraphs and complete the certification below:

1. _____ We do not currently have, or we have not had within the previous
Initials three years, business activities or other operations outside of the United States.

OR

2. _____ We are a scrutinized company as defined in Public Contract Code
Initials section 10476, but we have received written permission from the Department of General Services (DGS) to submit a bid or proposal pursuant to Public Contract Code section 10477(b) or submit a contract/purchase order. A copy of the written permission from DGS is included with our bid, proposal or contract/purchase order.

OR

3. _____ We currently have, or we have had within the previous three years,
Initials business activities or other operations outside of the United States, but we certify below that we are not a scrutinized company as defined in Public Contract Code section 10476.

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind this company to the clause listed above. This certification is made under the laws of the State of California.

<i>Company Name (Printed)</i> Stanislaus County Health Services Agency	<i>Federal ID Number</i> 94-6000540
<i>By (Authorized Signature)</i> 	
<i>Printed Name and Title of Person Signing</i> Mary Ann Lee, Managing Director	
<i>Date Executed</i> 	<i>Executed in the County and State of</i> Stanislaus

CCC-307

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

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If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

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b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

STATE OF CALIFORNIA
STANDARD AGREEMENT
 STD 213 (Rev 06/03)

2014-230
 5/13/14 #B-3

REGISTRATION NUMBER	AGREEMENT NUMBER
	13-20731

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME (Also referred to as CDPH or the State)
 California Department of Public Health

CONTRACTOR'S NAME (Also referred to as Contractor)
 Stanislaus Public Health Department

2. The term of this Agreement is: July 1, 2013 through June 30, 2016



3. The maximum amount of this Agreement is: \$ 0
 Zero Dollars

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

Exhibit A – Scope of Work	4 pages
Exhibit A-I – Definition of Terms	1 Page
Exhibit C * – General Terms and Conditions	GTC 610
Exhibit D – HIPAA Business Associate Exhibit	11 page
Exhibit D(F) – Special Terms and Conditions	25 pages

Items shown above with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <http://www.ols.dgs.ca.gov/Standard+Language>.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		California Department of General Services Use Only
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)		
Stanislaus Public Health Department		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
	5/14/14	
PRINTED NAME AND TITLE OF PERSON SIGNING		
MARY ANN LEE MANAGING DIRECTOR Health Services Agency		
ADDRESS		
820 Scenic Drive, Modesto, CA 95350		
STATE OF CALIFORNIA		
AGENCY NAME		
California Department of Public Health		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
	6/15/14	
PRINTED NAME AND TITLE OF PERSON SIGNING		
Yolanda Murillo, Chief, Contracts Management Unit		
ADDRESS		
1616 Capitol Avenue, Suite 74.317, MS 1802, PO Box 997377 Sacramento, CA 95899-7377		

Exempt per: OOA Budget Act 2013

APPROVED AS TO FORM:

BY:  DATE: 5/5/14
 Marc Hartley, Deputy County Counsel

Exhibit A
Scope of Work

1. Service Overview

California Health and Safety Code 131019 designates the California Department of Public Health (CDPH), Center for Infectious Diseases, Office of AIDS (OA) as the lead agency within the state responsible for coordinating state programs, services and activities related to HIV and AIDS.

The Contractor agrees to provide CDPH/OA the services described herein.

2. Service Location

The services shall be performed at Stanislaus Public Health Department.

3. Project Representative

A. The project representatives during the term of this agreement will be:

California Department of Public Health Celia Banda-Brown, OA ADAP Chief Telephone: (916) 449-5943 Fax: (916) 449-5859 Email: Celia.Banda-Brown@cdph.ca.gov	Agency Name: Stanislaus Public Health Department Site Contact: Jessica Montoya-Juarez Telephone: (209) 558-4800 Fax: (209) 558-4905 Email: jmontoya@schsa.org
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B. Direct all inquiries to:

California Department of Public Health OA ADAP Advisor Attention: Debbie Kalhor MS 7700, P.O. Box 997426 Sacramento, CA 95899-7426 Telephone: (916) 319-9616 Fax: (916) 449-5859 Email: Debbie.kalhor@cdph.ca.gov	Agency Name: Stanislaus Public Health Department Attention: Mary Ann Lee, Managing Director 820 Scenic Drive Modesto, CA 95350 Telephone: (209) 558-7163 Fax: (209) 558-8320 Email: Mlee@schsa.org
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C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.

4. Services to be Performed

- 1) Adhere to the ADAP "Enrollment Procedures and Guidelines for Determining ADAP Eligibility" and any subsequent revisions, along with all instructions, policy memorandums, or directives issued by the CDPH/OA, and/or the statewide ADAP PBM. The CDPH/OA will make any changes and/or additions to these guidelines in writing and, whenever possible, notification of such changes shall be made 30 days prior to implementation.

Exhibit A
Scope of Work

- 2) Designate an ADAP Enrollment Site contact to carry out the requirements of this contract agreement on behalf of the ADAP Enrollment Site and facilitate the following information exchange between CDPH/OA, the ADAP Coordinator, and the ADAP PBM:
 - a. Notify the ADAP Coordinator and the ADAP PBM of any ADAP EW job duties or employment status changes that affect their status as an ADAP EW.
 - b. Coordinate the activation of new ADAP EW identification (ID) numbers and de-activation of non-active ADAP EW ID numbers.
 - c. Ensure ADAP EWs complete accurate ADAP client eligibility documentation for the initial enrollment and subsequent recertification, and adhere to ADAP eligibility guidelines and policies.
 - d. Distribute CDPH/OA and/or ADAP PBM information to all ADAP EWs at the site.
 - e. Notify the ADAP Coordinator of ADAP Enrollment Site concerns or problems, including any planned site relocation/change of address, upon discovery.
 - f. Facilitate CDPH/OA site visit requests.
- 3) Ensure all ADAP EWs successfully complete training provided by the ADAP PBM prior to enrolling or re-certifying ADAP clients. All ADAP EWs must complete annual refresher trainings provided by the ADAP PBM to receive certification from the ADAP PBM in order to continue conducting ADAP enrollment functions.
- 4) Assure each ADAP EW at the site signs and submits to CDPH/OA the "Agreement by Employee/Contractor to Comply with Confidentiality Requirements (CDPH 8689)" on an annual basis. Submission of the form will be required at the time of mandatory ADAP EW recertification training. The ADAP EWs recertification process will not be complete until the completed form is received by CDPH/OA.
- 5) Ensure all ADAP EWs must be identified and have individual ADAP ID numbers issued by the ADAP PBM. This number may only be used by the EW to whom it was assigned. Enrollment of ADAP clients must be linked to individual ADAP EW ID numbers (i.e. to the specific enrollment worker performing the services at the specific Enrollment Site). EWs conducting ADAP enrollments/re-certifications at multiple ADAP Enrollment Sites must have an ADAP EW ID number unique to each CDPH/OA-approved ADAP Enrollment Site.
- 6) Report any changes in ADAP EW status (e.g. termination, relocation, separation, etc.) to the ADAP Coordinator and the ADAP PBM within 24 hours. Such reporting is required to assure termination of ADAP EW privileges, including access to ADAP client information, and to protect the confidentiality of the ADAP PBM database.
- 7) Ensure if an ADAP Enrollment Site chooses to enroll clients electronically through the ADAP PBM secure website, only desktop computers can be used. For purposes of security and to protect the confidentiality of ADAP client information, the use of laptop computers is prohibited for ADAP client enrollment purposes.
- 8) Notify the ADAP Coordinator, the ADAP PBM, and CDPH/OA if the site wishes to change from an open site (one which serves any individual who wishes to enroll) to a closed site (one which serves only agency-affiliated individuals) or vice versa. The ADAP Enrollment Site contact will notify all parties within 30 days prior to the change in status.

Exhibit A
Scope of Work

- 9) Ensure no ADAP EW is employed by nor receives any financial compensation, including gifts or any type of incentive, from a participating ADAP pharmacy.
- 10) ADAP client enrollment may not occur at a participating ADAP pharmacy location.
- 11) Maintain confidential client file records (electronic or hard copy) required to document ADAP client eligibility. These records are to be maintained separate and apart from any other client-related information at the site. Only authorized ADAP EWs can have access to ADAP client eligibility file information, unless otherwise authorized by law or the client. For purposes of federal audit requirements, client files/records shall be maintained for four years (the current year, plus three prior years).
- 12) Provide access to all ADAP client eligibility files and any other documentation related to this contract agreement. Access shall be granted during normal working hours to authorized representatives of CDPH/OA and other state and federal agencies, and are subject to applicable state and federal laws concerning confidentiality.
- 13) Ensure no client eligibility documentation, records, files, etc., will be transported to or from the ADAP Enrollment Site. Exception to this restriction may be approved by CDPH/OA for the following reasons:
 - a. Client disability; or,
 - b. Remote distance requires ADAP EW to meet with client outside of the ADAP Enrollment Site; or,
 - c. The entire ADAP Enrollment Site is moving to a new address/location.

Prior to transporting any ADAP client enrollment files, the site agrees to submit a written request to CDPH/OA which justifies the necessity for off-site client enrollment or identifies the relocation of the files to a new address/location. The request shall include a "Plan for Transporting Confidential ADAP Client Files", which identifies the specific procedure that will be followed to safeguard the confidentiality of the ADAP client documents being transported, as well as who will be responsible/accountable for this procedure. The site further agrees no client enrollment files will be transported until CDPH/OA provides written notification that the policies/procedures were deemed appropriate.
- 14) Ensure fax machines used to submit ADAP applications or receive ADAP correspondence which include confidential client information must be located in a secure area such that the confidentiality of the information sent and received is maintained at all times. The ADAP Enrollment Site must assure only certified ADAP EWs have access to confidential ADAP client information sent or received by fax.
- 15) Agree to the provisions as stated in Exhibit C, "NON-DISCRIMINATION CLAUSE." During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave.

Exhibit A
Scope of Work

- 16) Agree to the provisions as stated in Exhibit D, "Health Insurance Portability and Accountability Act (HIPAA) Business Associate Exhibit."
- 17) Arrange for the transfer/relocation of the ADAP client files through the ADAP Coordinator if an ADAP Enrollment Site ceases to conduct ADAP enrollment for any reason. Additionally, the ADAP Enrollment Site must notify CDPH/OA and the ADAP PBM of the planned deactivation of the site. Such reporting is necessary to assure termination of EW privileges, including access to ADAP client information, to protect the confidentiality of the ADAP PBM database, and to provide current and accurate ADAP Enrollment Site information to individuals wanting to access ADAP services statewide.
- 18) Make a copy of this contract agreement available to the ADAP EWs and agree to ensure they acknowledge and comply with the contents herein.

**Exhibit A-1
Definition of Terms**

CDPH/OA – Works collaboratively with state and federal agencies, local health jurisdictions, universities, and community-based organizations to ensure that efforts to combat the HIV/AIDS epidemic are targeted and effective.

AIDS Drug Assistance Program (ADAP) - Established in 1987 to help ensure that eligible, HIV-positive uninsured and under-insured individuals have access to HIV-related medication.

Local Health Jurisdiction (LHJ) – One of fifty-eight counties and three cities (Pasadena, Long Beach, and Berkeley) in the state of California.

Pharmacy Benefits Management (PBM) - Service contractor providing operational support for ADAP.

ADAP Coordinator - LHJ or other local agency staff designated to act as the primary county contact between the ADAP Enrollment Sites, the ADAP PBM, and CDPH/OA.

ADAP Enrollment Site - CDPH/OA-approved local site providing ADAP enrollment services for potentially eligible individuals.

ADAP Enrollment Worker (EW) – ADAP Enrollment Site staff trained by the ADAP PBM and certified to provide ADAP enrollment services.

OA/ADAP Advisor – OA/ADAP staff assigned to LHJ and ADAP Enrollment Sites for technical assistance.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

Exhibit D

HIPAA Business Associate Exhibit

I. Recitals

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations:").
- B. The California Department of Public Health ("CDPH") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI") pursuant to HIPAA regulations.
- C. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- D. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- E. As set forth in this Agreement Contractor is the Business Associate of CDPH that provides services, arranges, performs or assists in the performance of functions or activities on behalf of CDPH and creates, receives, maintains, transmits, uses or discloses PHI.
- F. CDPH and Business Associate desire to protect the privacy and provide for the security of PHI created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations.
- G. The purpose of this Exhibit is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations, and other applicable laws.
- H. The terms used in this Exhibit, but not otherwise defined, shall have the same meanings as those terms are defined in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

Exhibit D
HIPAA Business Associate Exhibit

II. Permitted Uses and Disclosures of PHI by Business Associate

- A. **Permitted Uses and Disclosures.** Except as otherwise indicated in this Exhibit, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of CDPH, provided that such use or disclosure would not violate the HIPAA regulations, if done by CDPH.
- B. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Exhibit, Business Associate may:
- 1) **Use and disclose for management and administration.** Use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.
 - 2) **Provision of Data Aggregation Services.** Use PHI to provide data aggregation services to CDPH. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of CDPH with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of CDPH.

III. Responsibilities of Business Associate

Business Associate agrees:

- A. **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- B. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of CDPH; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section C, Security, below. Business Associate will provide CDPH with its current and updated policies.
- C. **Security.** The Business Associate shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing CDPH PHI. These steps shall include, at a minimum:
- 1) complying with all of the data system security precautions listed in the Business Associate Data Security Standards set forth in Attachment 1 to this Exhibit;
 - 2) providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and

Exhibit D
HIPAA Business Associate Exhibit

- 3) In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to CDPH PHI from breaches and security incidents.
- D. **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Exhibit.
- E. **Business Associate's Agents.** To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of CDPH, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including implementation of reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI; and to incorporate, when applicable, the relevant provisions of this Exhibit into each subcontract or subaward to such agents or subcontractors.
- F. **Availability of Information to CDPH and Individuals.** To provide access as CDPH may require, and in the time and manner designated by CDPH (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to CDPH (or, as directed by CDPH), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for CDPH that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for CDPH health care component health plans; or those records used to make decisions about individuals on behalf of CDPH. Business Associate shall use the forms and processes developed by CDPH for this purpose and shall respond to requests for access to records transmitted by CDPH within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
- G. **Amendment of PHI.** To make any amendment(s) to PHI that CDPH directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by CDPH.
- H. **Internal Practices.** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from CDPH, or created or received by Business Associate on behalf of CDPH, available to CDPH or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by CDPH or by the Secretary, for purposes of determining CDPH's compliance with the HIPAA regulations.
- I. **Documentation of Disclosures.** To document and make available to CDPH or (at the direction of CDPH) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- J. **Notification of Breach.** During the term of this Agreement:
- 1) **Discovery of Breach.** To notify CDPH **immediately by telephone call plus email or fax** upon the discovery of breach of security of PHI in computerized form if the PHI was, or is reasonably believed to have been, acquired by an unauthorized person, or **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Exhibit, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information

Exhibit D
HIPAA Business Associate Exhibit

Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the CDPH ITSD Help Desk. Business Associate shall take:

- i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
 - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- 2) **Investigation of Breach.** To immediately investigate such security incident, breach, or unauthorized use or disclosure of PHI or confidential data. **Within 72 hours of the discovery**, to notify the CDPH Program Contract Manager(s), the CDPH Privacy Officer, and the CDPH Chief Information Security Officer of:
- i. What data elements were involved and the extent of the data involved in the breach,
 - ii. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data,
 - iii. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized,
 - iv. A description of the probable causes of the improper use or disclosure; and
 - v. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
- 3) **Written Report.** To provide a written report of the investigation to the CDPH Program Contract Managers, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
- 4) **Notification of Individuals.** To notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and to pay any costs of such notifications, as well as any costs associated with the breach. The CDPH Program Contract Managers, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer shall approve the time, manner and content of any such notifications.
- 5) **CDPH Contact Information.** To direct communications to the above referenced CDPH staff, the Contractor shall initiate contact as indicated herein. CDPH reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Exhibit or the Agreement to which it is incorporated.

Exhibit D
HIPAA Business Associate Exhibit

CDPH Program Contract Manager	CDPH Privacy Officer	CDPH Chief Information Security Officer
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer Privacy Office, c/o Office of Legal Services California Department of Public Health P.O. Box 997377, MS 0505 Sacramento, CA 95899-7377 Email: privacy@cdph.ca.gov Telephone: (916) 440-7671	Chief Information Security Officer Information Security Office California Department of Public Health P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413 Email: cdphiso@cdph.ca.gov Telephone: IT Service Desk (916) 440-7000 or (800) 579-0874

K. **Employee Training and Discipline.** To train and use reasonable measures to ensure compliance with the requirements of this Exhibit by employees who assist in the performance of functions or activities on behalf of CDPH under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Exhibit, including by termination of employment. In complying with the provisions of this section K, Business Associate shall observe the following requirements:

- 1) Business Associate shall provide information privacy and security training, at least annually, at its own expense, to all its employees who assist in the performance of functions or activities on behalf of CDPH under this Agreement and use or disclose PHI.
- 2) Business Associate shall require each employee who receives information privacy and security training to sign a certification, indicating the employee's name and the date on which the training was completed.
- 3) Business Associate shall retain each employee's written certifications for CDPH inspection for a period of three years following contract termination.

IV. Obligations of CDPH

CDPH agrees to:

- A. **Notice of Privacy Practices.** Provide Business Associate with applicable and relevant Notice(s) of Privacy Practices that CDPH HIPAA-covered healthcare components produce in accordance with 45 CFR 164.520, as well as any changes to such notice(s).
- B. **Permission by Individuals for Use and Disclosure of PHI.** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. **Notification of Restrictions.** Notify the Business Associate of any restriction to the use or disclosure of PHI that CDPH has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. **Requests Conflicting with HIPAA Rules.** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by CDPH.

Exhibit D
HIPAA Business Associate Exhibit

V. Audits, Inspection and Enforcement

From time to time, CDPH may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Exhibit. Business Associate shall promptly remedy any violation of any provision of this Exhibit and shall certify the same to the CDPH Privacy Officer or the CDPH Chief Information Security Officer in writing. The fact that CDPH inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Exhibit, nor does CDPH's:

- A. Failure to detect or
- B. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of CDPH's enforcement rights under this Agreement and this Exhibit.

VI. Termination

- A. **Termination for Cause.** Upon CDPH's knowledge of a material breach of this Exhibit by Business Associate, CDPH shall:
 - 1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by CDPH;
 - 2) Immediately terminate this Agreement if Business Associate has breached a material term of this Exhibit and cure is not possible; or
 - 3) If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.
- B. **Judicial or Administrative Proceedings.** Business Associate will notify CDPH if it is named as a defendant in a criminal proceeding for a violation of HIPAA. CDPH may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. CDPH may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- C. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Business Associate shall promptly return or destroy all PHI received from CDPH (or created or received by Business Associate on behalf of CDPH) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, shall continue to extend the protections of this Exhibit to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

VII. Miscellaneous Provisions

- A. **Disclaimer.** CDPH makes no warranty or representation that compliance by Business Associate with this Exhibit, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business

Exhibit D
HIPAA Business Associate Exhibit

Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

- B. **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Exhibit may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon CDPH's request, Business Associate agrees to promptly enter into negotiations with CDPH concerning an amendment to this Exhibit embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. CDPH may terminate this Agreement upon thirty (30) days written notice in the event:
- 1) Business Associate does not promptly enter into negotiations to amend this Exhibit when requested by CDPH pursuant to this Section or
 - 2) Business Associate does not enter into an amendment providing assurances regarding the safeguarding and security of PHI that CDPH in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to CDPH at no cost to CDPH to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CDPH, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- D. **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than CDPH or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. **Interpretation.** The terms and conditions in this Exhibit shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Exhibit shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- F. **Regulatory References.** A reference in the terms and conditions of this Exhibit to a section in the HIPAA regulations means the section as in effect or as amended.
- G. **Survival.** The respective rights and obligations of Business Associate under Section VII.C of this Exhibit shall survive the termination or expiration of this Agreement.
- H. **No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

Exhibit D
HIPAA Business Associate Exhibit

Attachment 1
Business Associate Data Security Standards

1. General Security Controls

- A. **Confidentiality Statement.** All persons that will be working with CDPH PHI must sign a confidentiality statement. The statement must include at a minimum, General Use, Security and Privacy safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to CDPH PHI. The statement must be renewed annually. The Business Associate shall retain each person's written confidentiality statement for CDPH inspection for a period of three (3) years following contract termination.
- B. **Background check.** Before a member of the Business Associate's workforce may access CDPH PHI, Business Associate must conduct a thorough background check of that worker and evaluate the results to assure that there is no indication that the worker may present a risk for theft of confidential data. The Business Associate shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.
- C. **Workstation/Laptop encryption.** All workstations and laptops that process and/or store CDPH PHI must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. The encryption solution must be full disk unless approved by the CDPH Information Security Office.
- D. **Server Security.** Servers containing unencrypted CDPH PHI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- E. **Minimum Necessary.** Only the minimum necessary amount of CDPH PHI required to perform necessary business functions may be copied, downloaded, or exported.
- F. **Removable media devices.** All electronic files that contain CDPH PHI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher
- G. **Antivirus software.** All workstations, laptops and other systems that process and/or store CDPH PHI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- H. **Patch Management.** All workstations, laptops and other systems that process and/or store CDPH PHI must have security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation

Exhibit D
HIPAA Business Associate Exhibit

timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.

- I. **User IDs and Password Controls.** All users must be issued a unique user name for accessing CDPH PHI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Must be at least eight characters. Must be a non-dictionary word. Must not be stored in readable format on the computer. Must be changed every 60 days. Must be changed if revealed or compromised. Must be composed of characters from at least three of the following four groups from the standard keyboard:
 - Upper case letters (A-Z)
 - Lower case letters (a-z)
 - Arabic numerals (0-9)
 - Non-alphanumeric characters (punctuation symbols)
- J. **Data Sanitization.** All CDPH PHI must be sanitized using NIST Special Publication 800-88 standard methods for data sanitization when the CDPH PSCI is no longer needed.

2. System Security Controls

- A. **System Timeout.** The system must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- B. **Warning Banners.** All systems containing CDPH PHI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only. User must be directed to log off the system if they do not agree with these requirements.
- C. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for CDPH PHI, or which alters CDPH PHI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If CDPH PHI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- D. **Access Controls.** The system must use role based access controls for all user authentications, enforcing the principle of least privilege.
- E. **Transmission encryption.** All data transmissions of CDPH PHI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. Encryption can be end to end at the network level, or the data files containing CDPH PHI can be encrypted. This requirement pertains to any type of CDPH PHI in motion such as website access, file transfer, and E-Mail.

Exhibit D

HIPAA Business Associate Exhibit

- F. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting CDPH PHI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3. Audit Controls

- A. **System Security Review.** All systems processing and/or storing CDPH PHI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews shall include vulnerability scanning tools.
- B. **Log Reviews.** All systems processing and/or storing CDPH PHI must have a routine procedure in place to review system logs for unauthorized access.
- C. **Change Control.** All systems processing and/or storing CDPH PHI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4. Business Continuity / Disaster Recovery Controls

- a. **Disaster Recovery.** Business Associate must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic CDPH PHI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this agreement for more than 24 hours.

Data Backup Plan. Business Associate must have established documented procedures to backup CDPH PHI to maintain retrievable exact copies of CDPH PHI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and the amount of time to restore CDPH PHI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of CDPH data.

5. Paper Document Controls

- A. **Supervision of Data.** CDPH PHI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. CDPH PHI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- B. **Escorting Visitors.** Visitors to areas where CDPH PHI is contained shall be escorted and CDPH Protected Health Information shall be kept out of sight while visitors are in the area.
- C. **Confidential Destruction.** CDPH PHI must be disposed of through confidential means, using NIST Special Publication 800-88 standard methods for data sanitization when the CDPH PSCI is no longer needed.

Exhibit D

HIPAA Business Associate Exhibit

- D. **Removal of Data.** CDPH PHI must not be removed from the premises of the Business Associate except with express written permission of CDPH.

- E. **Faxing.** Faxes containing CDPH PHI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending.

- F. **Mailing.** CDPH PHI shall only be mailed using secure methods. Large volume mailings of CDPH Protected Health Information shall be by a secure, bonded courier with signature required on receipt. Disks and other transportable media sent through the mail must be encrypted with a CDPH approved solution, such as a solution using a vendor product specified on the CSSI.

CCC-307

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations,

or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

Special Terms and Conditions

(For federally funded service contracts or agreements and grant agreements)

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition.

The terms "contract", "Contractor" and "Subcontractor" shall also mean, "agreement", "grant", "grant agreement", "Grantee" and "Subgrantee" respectively.

The terms "California Department of Public Health" and "CDPH" shall have the same meaning and refer to the California State agency that is a party to this Agreement.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount, agreement is federally funded, etc.). The provisions herein apply to this Agreement unless the provisions are removed by reference on the face of this Agreement, the provisions are superseded by an alternate provision appearing elsewhere in this Agreement, or the applicable conditions do not exist.

Index of Special Terms and Conditions

1. Federal Equal Employment Opportunity Requirements	17. Human Subjects Use Requirements
2. Travel and Per Diem Reimbursement	18. Novation Requirements
3. Procurement Rules	19. Debarment and Suspension Certification
4. Equipment Ownership / Inventory / Disposition	20. Smoke-Free Workplace Certification
5. Subcontract Requirements	21. Covenant Against Contingent Fees
6. Income Restrictions	22. Payment Withholds
7. Audit and Record Retention	23. Performance Evaluation
8. Site Inspection	24. Officials Not to Benefit
9. Federal Contract Funds	25. Four-Digit Date Compliance
10. Intellectual Property Rights	26. Prohibited Use of State Funds for Software
11. Air or Water Pollution Requirements	27. Use of Small, Minority Owned and Women's Businesses
12. Prior Approval of Training Seminars, Workshops or Conferences	28. Alien Ineligibility Certification
13. Confidentiality of Information	29. Union Organizing
14. Documents, Publications, and Written Reports	30. Contract Uniformity (Fringe Benefit Allowability)
15. Dispute Resolution Process	31. Lobbying Restrictions and Disclosure Certification
16. Financial and Compliance Audit Requirements	32. Additional Restrictions

1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements entered into by the California Department of Public Health (CDPH) formerly known as California Department of Health Services (CDHS).)

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or CDPH, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or CDPH may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by CDPH, the Contractor may request in writing to CDPH, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with agreement funds.)

Reimbursement for travel and per diem expenses from CDPH under this Agreement shall, unless otherwise specified in this Agreement, be at the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated in CDPH's Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary. Exceptions to DPA rates may be approved by CDPH upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior authorization from CDPH. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

3. Procurement Rules

(Applicable to all agreements in which equipment, property, commodities and/or supplies are furnished by CDPH or expenses for said items are reimbursed with state or federal funds.)

a. Equipment definitions

Wherever the term equipment /property is used, the following definitions shall apply:

- (1) **Major equipment/property:** A tangible or intangible item having a base unit cost of **\$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.
 - (2) **Minor equipment/property:** A tangible item having a base unit cost of **less than \$5,000** with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this Agreement.
- b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this Agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.
- c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this Agreement.

- (1) Equipment purchases shall not exceed \$50,000 annually.

To secure equipment above the annual maximum limit of \$50,000, the Contractor shall make arrangements through the appropriate CDPH Program Contract Manager, to have all remaining equipment purchased through CDPH's Purchasing Unit. The cost of equipment purchased by or

through CDPH shall be deducted from the funds available in this Agreement. Contractor shall submit to the CDPH Program Contract Manager a list of equipment specifications for those items that the State must procure. The State may pay the vendor directly for such arranged equipment purchases and title to the equipment will remain with CDPH. The equipment will be delivered to the Contractor's address, as stated on the face of the Agreement, unless the Contractor notifies the CDPH Program Contract Manager, in writing, of an alternate delivery address.

- (2) All equipment purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.
- (3) Nonprofit organizations and commercial businesses, shall use a procurement system that meets the following standards:
 - (a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
 - (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
 - (c) Procurements shall be conducted in a manner that provides for all of the following:
 - [1] Avoid purchasing unnecessary or duplicate items.
 - [2] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
 - [3] Take positive steps to utilize small and veteran owned businesses.
- d. Unless waived or otherwise stipulated in writing by CDPH, prior written authorization from the appropriate CDPH Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by CDPH, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- e. In special circumstances, determined by CDPH (e.g., when CDPH has a need to monitor certain purchases, etc.), CDPH may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. CDPH reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that CDPH determines to be unnecessary in carrying out performance under this Agreement.
- f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.
- h. CDPH may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

4. Equipment Ownership / Inventory / Disposition

(Applicable to agreements in which equipment and/or property is furnished by CDPH and/or when said items are purchased or reimbursed with state or federal funds.)

- a. Wherever the terms equipment and/or property are used in Provision 4, the definitions in Provision 3, Paragraph a, shall apply.

Unless otherwise stipulated in this Agreement, all equipment and/or property that are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement shall be considered state equipment and the property of CDPH.

- (1) CDPH requires the reporting, tagging and annual inventorying of all equipment and/or property that is furnished by CDPH or purchased/reimbursed with funds provided through this Agreement.

Upon receipt of equipment and/or property, the Contractor shall report the receipt to the CDPH Program Contract Manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by CDPH's Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with CDPH Funds) does not accompany this Agreement, Contractor shall request a copy from the CDPH Program Contract Manager.

- (2) If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or property to the CDPH Program Contract Manager using a form or format designated by CDPH's Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of CDPH-Funded Equipment) does not accompany this Agreement, Contractor shall request a copy from the CDPH Program Contract Manager. Contractor shall:

- (a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
- (b) Submit the inventory report to CDPH according to the instructions appearing on the inventory form or issued by the CDPH Program Contract Manager.
- (c) Contact the CDPH Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by CDPH's Asset Management Unit.

- b. Title to state equipment and/or property shall not be affected by its incorporation or attachment to any property not owned by the State.

- c. Unless otherwise stipulated, CDPH shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.

- d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.

- (1) In administering this provision, CDPH may require the Contractor and/or Subcontractor to repair or replace, to CDPH's satisfaction, any damaged, lost or stolen state equipment and/or property. Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the CDPH Program Contract Manager.

- e. Unless otherwise stipulated by the program funding this Agreement, equipment and/or property purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, shall only be used for performance of this Agreement or another CDPH agreement.

- f. Within sixty (60) calendar days prior to the termination or end of this Agreement, the Contractor shall provide a final inventory report of equipment and/or property to the CDPH Program Contract Manager and

written notice to the State (California Department of Public Health (CDPH)).

- [2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this Agreement and any extension or continuation of this Agreement.
 - [3] The insurance carrier shall notify CDPH, in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to each agreement number for which the insurance was obtained.
- (f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by CDPH, in writing, if this provision is applicable to this Agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.
- (g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, CDPH may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

5. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services costing \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.
- (1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.
 - (2) The State may identify the information needed to fulfill this requirement.
 - (3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
 - (a) A local governmental entity or the federal government,
 - (b) A State college or university from any State,
 - (c) A Joint Powers Authority,
 - (d) An auxiliary organization of a California State University or a California community college,
 - (e) A foundation organized to support the Board of Governors of the California Community Colleges,
 - (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
 - (g) Entities of any type that will provide subvention aid or direct services to the public,
 - (h) Entities and/or service types identified as exempt from advertising in State Contracting Manual 5.80. View this publication at the following Internet address:
<http://www.ols.dgs.ca.gov/Contract+Manual/Chapters4through6.htm>.
 - (i) Entities whose name and budgeted costs have been submitted to CDPH in response to a competitive solicitation.
- b. CDPH reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.

- (1) Upon receipt of a written notice from CDPH requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by CDPH.
- c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of CDPH. CDPH may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by CDPH.
 - d. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by CDPH, make copies available for approval, inspection, or audit.
 - e. CDPH assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.
 - f. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.
 - g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.
 - h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"*(Subcontractor Name)* agrees to maintain and preserve, until three years after termination of *(Agreement Number)* and final payment from CDPH to the Contractor, to permit CDPH or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
 - i. Unless otherwise stipulated in writing by CDPH, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.
 - j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, and 31 or other numbered provisions herein that deemed applicable.

6. Income Restrictions

Unless otherwise stipulated in this Agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to CDPH, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by CDPH under this Agreement.

7. Audit and Record Retention

(Applicable to agreements in excess of \$10,000.)

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that CDPH, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this

Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).

- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (1) or (2) below.
 - (1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
 - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.
- g. The Contractor shall, if applicable, comply with the Single Audit Act and the audit reporting requirements set forth in OMB Circular A-133.

8. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

9. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

- a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
- b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.
- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

- d. CDPH has the option to invalidate or cancel the Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

10. Intellectual Property Rights

a. Ownership

- (1) Except where CDPH has agreed in a signed writing to accept a license, CDPH shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.
- (2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
 - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.
- (3) In the performance of this Agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of CDPH's Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of CDPH's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of CDPH. **Except as otherwise set forth herein, neither the Contractor nor CDPH shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to CDPH, Contractor agrees to abide by all license and confidentiality restrictions applicable to CDPH in the third-party's license agreement.
- (4) Contractor agrees to cooperate with CDPH in establishing or maintaining CDPH's exclusive rights in the Intellectual Property, and in assuring CDPH's sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to CDPH all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or CDPH and which result directly or indirectly from this Agreement or any subcontract.
- (5) Contractor further agrees to assist and cooperate with CDPH in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce CDPH's Intellectual Property rights and interests.

b. Retained Rights / License Rights

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Agreement. Contractor hereby grants to CDPH, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.
- (2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of CDPH or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

c. Copyright

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Paragraph a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to CDPH to any work product made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.
- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement, shall include CDPH's notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2007, etc.], Department of Public Health. This material may not be reproduced or disseminated without prior written permission from the Department of Public Health." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Patent Rights

With respect to inventions made by Contractor in the performance of this Agreement, which did not result from research and development specifically included in the Agreement's scope of work, Contractor hereby grants to CDPH a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the Agreement's scope of work, then Contractor agrees to assign to CDPH, without additional compensation, all its right, title and interest in and to such inventions and to assist CDPH in securing United States and foreign patents with respect thereto.

e. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining CDPH's prior written approval; and (ii) granting to or obtaining for CDPH, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon the these terms is unattainable, and CDPH determines that the Intellectual Property should be included in or is required for Contractor's performance of this Agreement, Contractor shall obtain a license under terms acceptable to CDPH.

f. Warranties

- (1) Contractor represents and warrants that:
 - (a) It is free to enter into and fully perform this Agreement.
 - (b) It has secured and will secure all rights and licenses necessary for its performance of this Agreement.
 - (c) Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.
 - (d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
 - (e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
 - (f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to CDPH in this Agreement.
 - (g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
 - (h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.
- (2) CDPH MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

g. Intellectual Property Indemnity

- (1) Contractor shall indemnify, defend and hold harmless CDPH and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDPH's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. CDPH reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDPH.

- (2) Should any Intellectual Property licensed by the Contractor to CDPH under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve CDPH's right to use the licensed Intellectual Property in accordance with this Agreement at no expense to CDPH. CDPH shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for CDPH to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, CDPH shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- (3) Contractor agrees that damages alone would be inadequate to compensate CDPH for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges CDPH would suffer irreparable harm in the event of such breach and agrees CDPH shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

h. Federal Funding

In any agreement funded in whole or in part by the federal government, CDPH may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the Agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

i. Survival

The provisions set forth herein shall survive any termination or expiration of this Agreement or any project schedule.

11. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of \$100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

12. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior CDPH approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this Agreement and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this Agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

13. Confidentiality of Information

- a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the

Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.

- b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
- c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDPH Program Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.
- d. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than CDPH without prior written authorization from the CDPH Program Contract Manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.
- f. As deemed applicable by CDPH, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

14. Documents, Publications and Written Reports

(Applicable to agreements over \$5,000 under which publications, written reports and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contractual communications) prepared as a requirement of this Agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts or agreements and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds \$5,000.

15. Dispute Resolution Process

- a. A Contractor grievance exists whenever there is a dispute arising from CDPH's action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDPH, the Contractor must seek resolution using the procedure outlined below.
 - (1) The Contractor should first informally discuss the problem with the CDPH Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
 - (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.

- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Division 2, Chapter 2, Article 3 (commencing with Section 1140) of the California Code of Regulations).
- c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the Agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.
- d. Unless otherwise stipulated in writing by CDPH, all dispute, grievance and/or appeal correspondence shall be directed to the CDPH Program Contract Manager.
- e. There are organizational differences within CDPH's funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDPH Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

16. Financial and Compliance Audit Requirements

- a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.
- b. Direct service contract means a contract or agreement for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code section 38020). Direct service contracts shall not include contracts, agreements, grants, or subventions to other governmental agencies or units of government nor contracts or agreements with regional centers or area agencies on aging (H&S Code section 38030).
- c. The Contractor, as indicated below, agrees to obtain one of the following audits:
 - (1) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives \$25,000 or more from any State agency under a direct service contract or agreement; the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
 - (2) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives less than \$25,000 per year from any State agency under a direct service contract or agreement, the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this Agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
 - (3) If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends \$500,000 or more in Federal awards, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:
 - (a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or

- (b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.
- (4) If the Contractor submits to CDPH a report of an audit other than an OMB A-133 audit, the Contractor must also submit a certification indicating the Contractor has not expended \$500,000 or more in federal funds for the year covered by the audit report.
- d. Two copies of the audit report shall be delivered to the CDPH program funding this Agreement. The audit report must identify the Contractor's legal name and the number assigned to this Agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the CDPH Program Contract Manager shall forward the audit report to CDPH's Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.
- e. The cost of the audits described herein may be included in the funding for this Agreement up to the proportionate amount this Agreement represents of the Contractor's total revenue. The CDPH program funding this Agreement must provide advance written approval of the specific amount allowed for said audit expenses.
- f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.
- g. Nothing in this Agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.
- h. Nothing in this provision limits the authority of the State to make audits of this Agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.
- i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.
- j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.
- k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

17. Human Subjects Use Requirements

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this Agreement, Contractor agrees that if any performance under this Agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

18. Novation Requirements

If the Contractor proposes any novation agreement, CDPH shall act upon the proposal within 60 days after receipt of the written proposal. CDPH may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, CDPH will initiate an amendment to this Agreement to formally implement the approved proposal.

19. Debarment and Suspension Certification

(Applicable to all agreements funded in part or whole with federal funds.)

- a. By signing this Agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
- b. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
 - (4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
 - (5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
 - (6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the CDPH Program Contract Manager.
- d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
- e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the CDPH may terminate this Agreement for cause or default.

20. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be

permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.

- b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- c. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.
- d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

21. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, CDPH shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

22. Payment Withholds

(Applicable only if a final report is required by this Agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this Agreement, CDPH may, at its discretion, withhold 10 percent (10%) of the face amount of the Agreement, 50 percent (50%) of the final invoice, or \$3,000 whichever is greater, until CDPH receives a final report that meets the terms, conditions and/or scope of work requirements of this Agreement.

23. Performance Evaluation

(Not applicable to grant agreements.)

CDPH may, at its discretion, evaluate the performance of the Contractor at the conclusion of this Agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with CDPH. Negative performance evaluations may be considered by CDPH prior to making future contract awards.

24. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this Agreement if made with a corporation for its general benefits.

25. Four-Digit Date Compliance

(Applicable to agreements in which Information Technology (IT) services are provided to CDPH or if IT equipment is procured.)

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

26. Prohibited Use of State Funds for Software

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

27. Use of Small, Minority Owned and Women's Businesses

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

- (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- (5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

28. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements.)

By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

29. Union Organizing

(Applicable only to grant agreements.)

Grantee, by signing this Agreement, hereby acknowledges the applicability of Government Code Sections 16645 through 16649 to this Agreement. Furthermore, Grantee, by signing this Agreement, hereby certifies that:

- a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.
- b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.

- c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.
- d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

30. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, CDPH sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

- a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
- b. As used herein, fringe benefits do not include:
 - (1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
 - (2) Director's and executive committee member's fees.
 - (3) Incentive awards and/or bonus incentive pay.
 - (4) Allowances for off-site pay.
 - (5) Location allowances.
 - (6) Hardship pay.
 - (7) Cost-of-living differentials
- c. Specific allowable fringe benefits include:
 - (1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- d. To be an allowable fringe benefit, the cost must meet the following criteria:
 - (1) Be necessary and reasonable for the performance of the Agreement.
 - (2) Be determined in accordance with generally accepted accounting principles.
 - (3) Be consistent with policies that apply uniformly to all activities of the Contractor.
- e. Contractor agrees that all fringe benefits shall be at actual cost.
- f. Earned/Accrued Compensation
 - (1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.
 - (2) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Provision f (3)(b) for an example.
 - (3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) **Example No. 1:**

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

(b) **Example No. 2:**

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

(c) **Example No. 3:**

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to CDPH, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

31. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded agreements in excess of \$100,000 per Section 1352 of the 31, U.S.C.)

a. Certification and Disclosure Requirements

- (1) Each person (or recipient) who requests or receives a contract or agreement, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.
- (2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract, or grant or any extension or amendment of that contract, or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.
- (3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
 - (b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or
 - (c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.
- (4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract or agreement, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or agreement, or grant shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to CDPH Program Contract Manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan, or cooperative agreement.

32. Additional Restrictions

(Applicable to all contracts funded in whole or in part with funding from the federal Departments of Labor, Health and Human Services (including CDC funding), or Education.)

Contractor shall comply with the restrictions under Division F, Title V, Section 503 of the Consolidated Appropriations Act, 2012 (H.R. 2055), which provides that:

“SEC. 503.(a) No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111–148 shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation to the Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government, except in presentation to the executive branch of any State or local government itself.

(b) No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111–148 shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

(c) The prohibitions in subsections (a) and (b) shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.”

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH
CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Form with signature lines and labels: Name of Contractor, Printed Name of Person Signing for Contractor, Contract / Grant Number, Signature of Person Signing for Contractor, Date, Title.

After execution by or on behalf of Contractor, please return to:

California Department of Public Health

CDPH reserves the right to notify the contractor in writing of an alternate submission address.

CERTIFICATION REGARDING LOBBYING

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

Approved by OMB
0348-0046

<p>1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award</p>	<p>3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: Year _____ quarter _____ date of last report _____.</p>
<p>4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier ____, if known: Congressional District, If known: _____</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, If known: _____</p>	
<p>6. Federal Department/Agency</p>	<p>7. Federal Program Name/Description: CDFA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known: \$ _____</p>	
<p>10.a. Name and Address of Lobbying Registrant (If individual, last name, first name, MI):</p>	<p>b. Individuals Performing Services (including address if different from 10a. (Last name, First name, MI):</p>	
<p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. required disclosure shall be subject to a not more than \$100,000 for each such failure.</p>	<p>Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____</p>	
<p>Federal Use Only</p>		<p>Authorized for Local Reproduction Standard Form-LLL (Rev. 7-97)</p>

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

STATE OF CALIFORNIA
STANDARD AGREEMENT
 STD 213 (Rev 06/03)

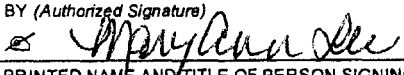
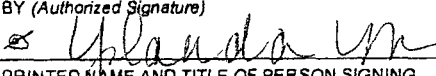
REGISTRATION NUMBER	AGREEMENT NUMBER 13-20975
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- This Agreement is entered into between the State Agency and the Contractor named below:
 STATE AGENCY'S NAME (Also referred to as CDPH or the State)
 California Department of Public Health
 CONTRACTOR'S NAME (Also referred to as Contractor)
 Stanislaus County Health Services Agency
- The term of this Agreement is: January 1, 2014 through December 31, 2016
- The maximum amount of this Agreement is: \$ 0 Zero Dollars
- The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

Exhibit A – Scope of Work	7 pages
Exhibit A – Attachment I	3 pages
Exhibit B – Budget Detail and Payment Provisions	4 pages
Exhibit C * – General Terms and Conditions	GTC 610
Exhibit D(F) - Special Terms and Conditions (Attached hereto as part of this agreement)	25 pages
Exhibit E – Additional Provisions	2 pages
Exhibit F – HIPAA Business Associate Exhibit	12 pages

Items shown above with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <http://www.ols.dgs.ca.gov/Standard+Language>.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		California Department of General Services Use Only <input checked="" type="checkbox"/> Exempt per: OOA Budget Act 2013
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) Stanislaus County Health Services Agency		
BY (Authorized Signature) 	DATE SIGNED (Do not type) 5/14/14	
PRINTED NAME AND TITLE OF PERSON SIGNING Mary Ann Lee, Managing Director		
ADDRESS 820 Scenic Drive, Modesto, CA 95350		
STATE OF CALIFORNIA		
AGENCY NAME California Department of Public Health		
BY (Authorized Signature) 	DATE SIGNED (Do not type) 6/4/14	
PRINTED NAME AND TITLE OF PERSON SIGNING Yolanda Murillo, Chief, Contracts Management Unit		
ADDRESS 1616 Capitol Avenue, Suite 74.317, MS 1802, PO Box 997377 Sacramento, CA 95899-7377		

APPROVED AS TO FORM:

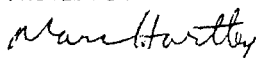
BY:  DATE: 5/5/14
 Marc Hartley, Deputy County Counsel

Exhibit A
Scope of Work

1. Service Overview

Contractor agrees to provide to the California Department of Public Health (CDPH) Office of AIDS (OA) the services described herein.

The Contractor shall administer the Medi-Cal Waiver Program (MCWP) by providing comprehensive case management and the provision of home and community-based care to participants diagnosed with HIV Disease or AIDS, in lieu of placement in a nursing facility or hospital. The purpose of the program is to allow individuals to remain in their homes, stabilize their health, improve their quality of life, and avoid costly institutional care. Both OA and the Contractor shall ensure that program administration complies with all applicable Federal and State laws, rules, and regulations.

2. Service Location

The services shall be performed in the client's home or residential setting within the County of Stanislaus.

3. Service Hours

The services shall be provided within normal Contractor business hours.

4. Project Representatives

The project representatives during the term of this agreement are:

California Department of Public Health Rhonda Shields Telephone: (916) 449-5962 Fax: (916) 449-5959 Email: Rhonda.Shields@cdph.ca.gov	Stanislaus County Health Services Agency Jessica Montoya-Juarez Telephone: (209)558-4800 Fax: (209)558-4905 Email: jmontoya@schsa.org
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Direct all inquiries to:

California Dept. of Public Health Care Program Policy Section Attention: Courtney Green Mail Station Code 7700 1616 Capitol Ave, Suite 74.616 P.O. Box Number 997426 Sacramento, CA, 95899-7426 Telephone: (916) 449-5975 Fax: (916) 449-5959 Email: Courtney.Green@cdph.ca.gov	Stanislaus County Health Services Agency Public Health Jessica Montoya-Juarez 820 Scenic Drive, Modesto, CA 95350 Telephone: (209)558-4800 Fax: (209)558-4905 Email: jmontoya@schsa.org
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Either party may make changes to their information above by giving written notice to the other party, and will not require an amendment to this agreement.

Exhibit A
Scope of Work

5. Services to be Performed

The Contractor shall provide interdisciplinary medical case management by a Nurse Case Manager (NCM) and a Social Work Case Manager (SWCM) to MCWP participants in accordance with this agreement and as defined in the *MCWP Protocols (MCWPP)* and:

- A. Ensure participants qualify for MCWP enrollment and document eligibility in participant case record. As needed, make available to OA such documentation for review.
- B. Verify and document participants case record Medi-Cal eligibility on a monthly basis.
- C. Ensure all clients are screened for other payer source eligibility and resources are accessed prior to the utilization of MCWP funds regardless of the funding resource, and document in participant case record.
- D. Conduct comprehensive face-to-face assessments and 90-day reassessments of all participants served under this agreement, to provide information on the client's medical and psychosocial status necessary to update and maintain the service plan, as outlined in the *MCWPP*.
- E. Conduct case management:
Case management services assist participants in gaining access to needed waiver and other *State Plan* services, as well as medical, social, educational, and other services, regardless of the funding source for the services to which access is gained. Case management provided to participants with a nursing facility level of care require:
 - At least one waiver service, as evidenced by the Comprehensive Service Plan (CSP), and
 - The provision of waiver services at least monthly or, if less frequently, monthly monitoring, as documented in the CSP to assure participant health and welfare.
- F. Coordinate the provisions of direct-care, home and community based services to the participant as defined in the *Medi-Cal Provider Manual Part 2*, herein by reference is incorporated in this agreement (*Exhibit E, provision 4*) .
 - Attendant care
 - Homemaker services
 - Psychotherapy
 - Skilled nursing - Registered Nurse (RN) and/or Licensed Vocational Nurse (LVN)
 - Non-emergency medical transportation
 - Specialized medical equipment and supplies and minor physical adaptations to the home
 - Nutritional supplements and home delivered meals

Exhibit A
Scope of Work

- Nutritional counseling
 - Medi-Cal supplement for infants and children in foster care
- G. Hold interdisciplinary team case conferences as outlined in MCWPP, at least every 90 days or when significant changes to the participant's condition occur.
- H. Develop and maintain comprehensive participant-centered service plans for each participant, notifying the attending physician or primary care practitioner of the contents.
- I. Subcontract with appropriately licensed and qualified agencies or individuals for direct-care services provided to the participants.
- J. Directly enter elements (MCWP minimum data set) into AIDS Regional Information and Evaluation System (ARIES) within two weeks of date of service. Contractors may import data into ARIES from other data collection systems only with prior written approval from OA. The MCWP minimum data set is incorporated herein, and made a part hereof by this reference.
- a) Comply with the policies and procedures outlined in ARIES Policy Notices issued by the CDPH/OA (see www.projectaries.org).

6. Participant Informed Consent/Agreement

The Contractor shall:

- A. Inform participants of their right to choose to participate in MCWP. The participant shall sign and date the *Informed Consent/Agreement to Participate* and provided a copy.
- B. At initial application, provide written notification to all applicants and to all existing MCWP participants, of any decision to deny, reduce, or discontinue MCWP services. The Contractor shall state the reason for the action and provide all applicants and all existing MCWP participants the State Fair Hearing Request document (*Your Right to Appeal/Notice of Action*). The participant shall acknowledge provision of information by signing and dating appropriate form(s) and provided a copy.
- C. Mandated reporter and case managers must identify and report instances of abuse, neglect, and exploitation. Provide written notification to all applicants at initial application and to all existing MCWP participants. The participant shall acknowledge provision of information by signing and dating appropriate form(s) and provided a copy.
- D. Inform MCWP participants of the right to file a grievance on adverse actions taken by Contractor. The participant shall acknowledge the provision of information by signing and dating appropriate form(s) and provided a copy.

Exhibit A
Scope of Work

- E. Inform MCWP participants of limits on MCWP services and the \$13,209 per participant, per calendar-year cap.
- F. Inform MCWP participants of case management rights; ensure th participant signs and dates appropriate form(s), acknowledging provision, and provided a copy of signed forms.
- G. Inform MCWP participants of the requirement for written authorization(s) to exchange confidential information. Ensure participant signs and dates the authorization(s), and provided a copy of signed form(s).

7. Staffing

The Contractor shall:

- A. Designate a project director to provide oversight of this contract. The project director has the overall responsibility of assuring compliance with the terms of this contract and serving as primary representative of the Contractor. The Contractor shall immediately notify OA in writing when an existing project director is vacating the position and when a new project director is designated. The Contractor shall provide OA a current resume or curriculum vitae for the new project director.
- B. Employ professional case management staff, qualified by education and experience with proof of Degree's.

Case Management Staff Qualifications:

Nurse Case Manager

- California licensed RN, with two years' experience as an RN, with at least one year in community nursing. A Bachelor of Science Degree in Nursing and/or Public Health Nurse Certificate is desirable but not mandatory.

Social Worker Case Manager

- California licensed as an Licensed Clinical Social Worker (LCSW), Marriage and Family Therapist (MFT), or Psychologist
- Master's Degree in Social Work, Counseling, or Psychology or similar degree qualifications approved by the OA prior to employment.

C. Provide appropriate staffing standards and staff to client ratios to carry out the requirements of this contract:

- One full-time equivalent NCM, and
- One full-time equivalent SWCM to 25 - 40 participants.

D. Maintain current duty statements, resume/curriculum vitae, and licensure (when applicable) for all staff who conduct activities under this contract.

E. Maintain a system to verify Contractor staff and subcontractor qualifications, training and licensure, prior to waiver service delivery and periodically thereafter.

Exhibit A
Scope of Work

8. Fiscal

The Contractor shall develop, implement, and maintain written fiscal policies and procedures that address:

- A. Track and monitor services ordered, delivered, and billed.
- B. Track costs of services (excluding administrative) for each participant to assure the spending cap per participant, per calendar year shall not exceed \$13,209.
- C. Identification of expenditures by program, program components, and/or budgetary category.
- D. Track transportation and nutritional supplements, home delivered meals expenditures by participant, by date, and by subcontract agreement.
- E. Preparation of financial statements to be made available to the project director, case management staff (for participant services portion), and the Board of Directors or County Board of Supervisors on a monthly basis.
- F. Staff-to-beneficiary ratios of one full time equivalent NCM and one full-time equivalent SWCM up to 40 beneficiaries.
- G. Reimbursement of subcontractors within 30 calendar days of the Contractor receiving payment from the State.
- H. Review Medi-Cal's debarred and ineligible provider listing prior to subcontracting with a service provider and at regular intervals thereafter.
- I. Maintain adequate documentation to support the appropriateness of expenditures incurred by the Contractor under the terms of this agreement. If the appropriateness of expenditures cannot be determined because records of the Contractor are nonexistent or inadequate according to generally accepted accounting principles, the questionable cost(s) shall be disallowed by the State. If expenditures are disallowed under this paragraph, the Contractor has a right to appeal. Make available such documentation to OA for review, as proof appropriateness of expenditures incurred, as needed.
- J. The Contractor must undergo an annual single, organization-wide financial and compliance audit in accordance with the requirements specified in *Exhibit D (F)* of this agreement.

Exhibit A
Scope of Work

9. Subcontracts

The Contractor shall not, as provider of case management services, also be provider of direct care services to the same participant, except with prior written approval from OA. This applies to any person or entity related to or affiliated with the Contractor, any person or entity with which or whom the Contractor has substantial financial interest, or any person or entity having a financial interest in the Contractor.

The Contractor is required to subcontract with a sufficient number of service providers to allow the participant or legal representative a choice from at least three providers for each MCWP service whenever possible.

- A. Subcontractors must agree to the current approved Medi-Cal rates for services. Rates that are higher than Medi-Cal rates cannot be approved, and the Contractor cannot subsidize the standard Medi-Cal rates with other funding sources. Under no circumstances may any Contractor augment rates for the Waiver program or bill for more than the Medi-Cal rate.
- B. The subcontractor selection process shall be based upon equitable criteria, provide for adequate publicity, screen out potential subcontractors that are not qualified to provide the needed services, and provide for subcontracts with the lowest responsible and responsive bidder(s).
- C. The Contractor shall verify the subcontractor and subcontractor staff meet licensing and certification requirements on an annual basis, and maintain continuous proof of licensure/certification by subcontractor and subcontractor staff at all times when services are provided to a participant.
- D. The Contractor shall have a policy and procedure in place to allow a review of the subcontractor's staff qualifications (i.e., current licensure and certification of a RN, LVN, nutritionist, home health aide, attendant care provider, or psychotherapist).
- E. By January 31 of each year, the Contractor shall submit a listing of all subcontractors to OA, which includes the entity or individual name and the services provided.
- F. The subcontractor shall be required to bill the Contractor within 30 calendar days of provision of services to their participants. The Contractor shall reimburse the subcontractor within 30 calendar days after receiving reimbursement from the State.
- G. It is the Contractor's responsibility to have a system in place to verify the services being billed for have been provided to participants and the rate billed to the State is the same as the amount paid to the subcontractor.
- H. Subcontracts for MCWP services must be signed by both the Contractor and subcontractor before services are provided. Subcontracts are subject to OA review and/or approval.

Exhibit A
Scope of Work

10. CDPH/OA RESPONSIBILITIES

CDPH/OA shall maintain a formal system to ensure the health and welfare of individuals served and program requirements are continuously met. This shall be accomplished through:

- A. Program compliance reviews to Contractors at least once every 24 months, in collaboration with the California Department of Health Care Services monitoring staff. These reviews include technical assistance, a discussion of program issues, a review of client records, review of agency policies and procedures, fiscal, staffing and subcontractor records, and HIPAA compliance, etc. Periodically, participate in client case conferences and client home visits.
- B. Assure financial integrity of the payments for waiver services by reviewing paid claims data and monitor the utilization of services for ordered, delivered and accurately billed direct care services.
- C. Provision of technical assistance to Contractors on an ongoing basis via telephone, e-mail or letters, and/or regional meetings.
- D. Provision of orientation workshops for new project directors and key case management staff, as needed.
- E. Identification of problems and deficiencies within 30 days of the Program Compliance Review and follow-up on the corrective action plans submitted by the Contractor in an appropriate and timely manner, consistent with the significance and nature of the deficiencies.
- F. Review of semi-annual progress reports, Quality Improvement/Quality Management (QI/QM) monitoring summaries, and the annual QI/QM Plan. Follow up shall be done as needed.
- G. Ensure submission, review, and follow up (as necessary) of annual audits obtained by Contractors.
- H. Issue policy directives, manuals, and correspondence including the Medi-Cal Waiver Program Protocols, Provider Operations Manual, QI/QM Guidelines, and All Project Director Letters.

Stanislaus County Health Services Agency
13-20975

Exhibit A - Attachment I
MCWP ARIES Data Set Elements

Field Name	Tab Location	Sub-tab Location
First Name	Client Search / Demographics	Demographic Detail
Middle Initial	Client Search/ Demographics	Demographic Detail
Last Name	Client Search/ Demographics	Demographic Detail
Mother's Maiden Name	Client Search/ Demographics	Demographic Detail
Date of Birth	Client Search/ Demographics	Demographic Detail
Gender	Client Search/ Demographics	Demographic Detail
Zip Code	Demographics	Contact Info
County	Demographics	Contact Info
Hispanic	Demographics	Demographic Detail
Hispanic National Origin / Ethnicity	Demographics	Demographic Detail
Race 1	Demographics	Demographic Detail
National Origin / Ethnicity 1	Demographics	Demographic Detail
Date of Death	Demographics	Demographic Detail
Current Living Situation Since	Demographics	Living Situation
Current Living Situation (Choose One)	Demographics	Living Situation
Agrees to Share Data	Demographics	Agency Specifics
Agency Status	Demographics	Agency Specifics
Status as of Date	Demographics	Agency Specifics
Agency Enrollment Date	Demographics	Agency Specifics
Eligibility Document Type – ARIES Consent Form	Eligibility	Eligibility Documents
Eligibility Document Type – HIV Letter of Diagnosis	Eligibility	Eligibility Documents
Eligibility Document Dated	Eligibility	
Household Income	Eligibility	Financial
Number of People in Household	Eligibility	Financial
Insurance Source	Eligibility	Insurance
Insurance Type	Eligibility	Insurance
Insurance Start Date	Eligibility	Insurance
Insurance End Date	Eligibility	Insurance
Program	Programs	CMP/MCWP
Status	Programs	CMP/MCWP
Status Date	Programs	CMP/MCWP
Client ID #	Programs	CMP/MCWP
Reason Disenrolled	Programs	CMP/MCWP
MCWP Level of Care	Programs	CMP/MCWP
CDC Disease Stage	Medical	Basic Medical
Date First HIV+	Medical	Basic Medical
AIDS Diagnosis Date	Medical	Basic Medical
Karnofsky / Cognitive & Functional Ability Scale (CFA)	Medical	Basic Medical

Stanislaus County Health Services Agency
13-20975

Field Name	Tab Location	Sub-tab Location
Karnofsky / CFA Date	Medical	Basic Medical
Pediatric Scale	Medical	Basic Medical
Pediatric Scale Date	Medical	Basic Medical
CD4 Test Date	Medical	Medical History
T Cell Count	Medical	Medical History
Viral Load Date	Medical	Medical History
Viral Load Value	Medical	Medical History
Date PPD/TST Placed	Medical	Medical History
Date PPD/TST Read	Medical	Medical History
IGRA Date	Medical	Medical History
Chest X-Ray Date	Medical	Medical History
TB Diagnosis	Medical	Medical History
Date of TB Diagnosis	Medical	Medical History
Treatment Start Date	Medical	Medical History
Treatment End Date	Medical	Medical History
TB Treatment Type	Medical	Medical History
TB Treatment Status	Medical	Medical History
Immunization Type	Medical	Medical History
Immunization Date	Medical	Medical History
Pap Smear & Pelvic Exam Date	Medical	OB/GYN & Pregnancy
Date First Reported Pregnant	Medical	OB/GYN & Pregnancy
Estimated Delivery Date	Medical	OB/GYN & Pregnancy
Date Prenatal Care Began	Medical	OB/GYN & Pregnancy
Date ART was Taken	Medical	OB/GYN & Pregnancy
Pregnancy Outcome	Medical	OB/GYN & Pregnancy
Date of Pregnancy Outcome	Medical	OB/GYN & Pregnancy
Newborn HIV Status	Medical	OB/GYN & Pregnancy
Reason Not on HAART	Medications	ART
ART Type	Medications	ART
Other Medications (Required for PCP Prophylaxis)	Medications	ART
Used for (Required for PCP Prophylaxis)	Medications	ART
Type (of other medication) (Required for PCP Prophylaxis)	Medications	ART
Other Medication Start/End Date (Required for PCP Prophylaxis)	Medications	ART
Client Risk Factors (Check all that apply: Sex with male; Sex with female; Injected nonprescription drugs; Received clotting factor for hemophilia/coagulation disorder, etc...)	Risk & Assessments	Risk Factors

Stanislaus County Health Services Agency
13-20975

Services (Required of all Providers)		
Client Name / ID	Services	N/A
Staff	Services	N/A
Date of Service	Services	N/A
Contract ID	Services	N/A
Program	Services	N/A
Primary Service	Services	N/A
Secondary Service (if applicable)	Services	N/A
Unit of Service	Services	N/A

Exhibit B
Budget Detail and Payment Provisions

1. Invoicing and Payment

Payment may be claimed only for those waiver services that are included in the comprehensive service plan and payment may not be claimed for services furnished prior to the development of the comprehensive service plan or for services not included in the comprehensive service plan. For services satisfactorily rendered, and upon receipt and approval of submitted claims, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates and/or allowable costs specified herein.

- A. Contractor assumes full financial risk for administering the program, providing case management services, managing the contractor/subcontractor billing process and disbursing payments to subcontractors for authorized MCWP services provided to participants.
- B. The State pays the Contractor for administrative and case management services based rate schedule per eligible, enrolled MCWP participant. Direct-care services are reimbursed not in excess of the rates established in *the Medi-Cal Inpatient/Outpatient Provider Manual Part 2 - AIDS Waiver Program Billing Codes and Rates*.

Contractor shall:

- a) Submit claims to California Department of Health Care Services' Fiscal Intermediary, *Xerox State Healthcare, LLC* in accordance with instructions provided in the Medi-Cal Provider Manual.
- b) Maintain adequate documentation to support the appropriateness of expenditures incurred under the terms of this agreement.
- c) Make claims for reimbursement only for correctly prepared and submitted claims received within six months following the month in which services were provided to eligible MCWP participants, in accordance with the Medi-Cal Provider Manual.

C. Rates Payable

Reimbursement for services satisfactorily performed is based on the following rate schedule:

<u>Code</u>	<u>Description</u>	<u>Maximum Rate</u>
T2022	Case Management	\$ 229.17/client/mo.
G0154TD	Skilled Nursing (RN)	10.15/15 min.
G0154TE	Skilled Nursing (LVN)	7.36/15 min.
90837	Psychotherapy	51.00/hr.
90846	Family Psychotherapy	51.00/hr.
90847	Family Psychotherapy with Patient Present	51.00/hr.

Exhibit B
Budget Detail and Payment Provisions

<u>Code</u>	<u>Description</u>	<u>Maximum Rate</u>
S5130	Homemaker Services	2.89/15 min.
G0156	Attendant Care	4.73/15 min.
T2026	Medi-Cal Supplement for Infants and Children in Foster Care	338.00/client/mo.
S5165, T2028 or T2029	Specialized Medical Equipment and Supplies, and Minor Physical Adaptations to the Home	1,000.00/client/yr.
T2003	Non-Emergency Medical Transportation	40.00/client/mo.
T2025	Administrative Expenses	170.28/client/mo.
S9470	Nutritional Counseling	33.48/hr.
S5170	Nutritional Supplements/ Home-Delivered Meals	150.00/client/mo.

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this agreement does not appropriate sufficient funds for the program, this agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this agreement and Contractor shall not be obligated to perform any provisions of this agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

4. Amounts Payable

- A. The amounts payable under this agreement per eligible participant served shall not exceed \$13,209 per calendar year. No funds are being encumbered under this agreement in that claims will be paid via the State's Medi-Cal Fiscal Intermediary.

Exhibit B
Budget Detail and Payment Provisions

5. Expense Allowability / Fiscal Documentation

- A. Claims, received from a Contractor and accepted and/or submitted for payment by the State, shall not be deemed evidence of allowable agreement costs.
- B. Contractor shall maintain for review and audit and supply to the State upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.
- C. If the allowability or appropriateness of an expense cannot be determined by the State because claim detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the State. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable. If expenses are disallowed under this paragraph, the Contractor has a right to appeal, in accordance with the Medi-Cal Provider Manual Appeals Process.
- D. Costs and/or expenses deemed unallowable are subject to recovery by CDPH. See provision # 6 in this exhibit entitled, "Recovery of Overpayments" for more information.

6. Recovery of Overpayments

- A. Contractor agrees that claims based upon a contractual agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by the State and/or Federal Government by one of the following options:
 - a) Contractor's remittance to the State of the full amount of the audit exception within 30 days following the State's request for repayments;
 - b) A repayment schedule that is agreeable to both the State and the Contractor.
- B. The State reserves the right to select which option will be employed and the Contractor will be notified by the State in writing of the claim procedure to be utilized.
- C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor beginning 30 days after Contractor's receipt of the State's demand for repayment.

If the Contractor has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If the Contractor loses the administrative appeal, the Contractor shall repay, to the State, the over-claimed or disallowed expenses, and accrued interest. Interest accrues from the Contractor's first receipt of State's notice requesting reimbursement of questioned audit costs or disallowed expenses.

Exhibit B
Budget Detail and Payment Provisions

7. Prohibition of Rebate, Refund, or Discount

Neither the Contractor nor any subcontractors shall offer, give, furnish, or deliver any rebate, refund, commission, preference, patronage dividend, discount, or any other gratuitous consideration, in connection with the rendering of services to any MCWP participant. Neither the Contractor nor subcontractor shall solicit, request, accept, or receive any rebate, refund, commission, preference, patronage dividend, discount, or any other gratuitous consideration in connection with the rendering of MCWP services to any MCWP participant.

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

CCC-307

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i> Stanislaus County Health Services Agency		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i> Mary Ann Lee, Managing Director		
<i>Date Executed</i>	<i>Executed in the County of</i> Stanislaus	

CONTRACTOR CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

Special Terms and Conditions

(For federally funded service contracts or agreements and grant agreements)

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition.

The terms "contract", "Contractor" and "Subcontractor" shall also mean, "agreement", "grant", "grant agreement", "Grantee" and "Subgrantee" respectively.

The terms "California Department of Public Health" and "CDPH" shall have the same meaning and refer to the California State agency that is a party to this Agreement.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount, agreement is federally funded, etc.). The provisions herein apply to this Agreement unless the provisions are removed by reference on the face of this Agreement, the provisions are superseded by an alternate provision appearing elsewhere in this Agreement, or the applicable conditions do not exist.

Index of Special Terms and Conditions

1. Federal Equal Employment Opportunity Requirements	17. Human Subjects Use Requirements
2. Travel and Per Diem Reimbursement	18. Novation Requirements
3. Procurement Rules	19. Debarment and Suspension Certification
4. Equipment Ownership / Inventory / Disposition	20. Smoke-Free Workplace Certification
5. Subcontract Requirements	21. Covenant Against Contingent Fees
6. Income Restrictions	22. Payment Withholds
7. Audit and Record Retention	23. Performance Evaluation
8. Site Inspection	24. Officials Not to Benefit
9. Federal Contract Funds	25. Four-Digit Date Compliance
10. Intellectual Property Rights	26. Prohibited Use of State Funds for Software
11. Air or Water Pollution Requirements	27. Use of Small, Minority Owned and Women's Businesses
12. Prior Approval of Training Seminars, Workshops or Conferences	28. Alien Ineligibility Certification
13. Confidentiality of Information	29. Union Organizing
14. Documents, Publications, and Written Reports	30. Contract Uniformity (Fringe Benefit Allowability)
15. Dispute Resolution Process	31. Lobbying Restrictions and Disclosure Certification
16. Financial and Compliance Audit Requirements	32. Additional Restrictions

1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements entered into by the California Department of Public Health (CDPH) formerly known as California Department of Health Services (CDHS).)

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or CDPH, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or CDPH may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by CDPH, the Contractor may request in writing to CDPH, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with agreement funds.)

Reimbursement for travel and per diem expenses from CDPH under this Agreement shall, unless otherwise specified in this Agreement, be at the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated in CDPH's Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary. Exceptions to DPA rates may be approved by CDPH upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior authorization from CDPH. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

3. Procurement Rules

(Applicable to all agreements in which equipment, property, commodities and/or supplies are furnished by CDPH or expenses for said items are reimbursed with state or federal funds.)

a. Equipment definitions

Wherever the term equipment /property is used, the following definitions shall apply:

- (1) **Major equipment/property:** A tangible or intangible item having a base unit cost of **\$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.
 - (2) **Minor equipment/property:** A tangible item having a base unit cost of **less than \$5,000** with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this Agreement.
- b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this Agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.
- c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this Agreement.

- (1) Equipment purchases shall not exceed \$50,000 annually.

To secure equipment above the annual maximum limit of \$50,000, the Contractor shall make arrangements through the appropriate CDPH Program Contract Manager, to have all remaining equipment purchased through CDPH's Purchasing Unit. The cost of equipment purchased by or

through CDPH shall be deducted from the funds available in this Agreement. Contractor shall submit to the CDPH Program Contract Manager a list of equipment specifications for those items that the State must procure. The State may pay the vendor directly for such arranged equipment purchases and title to the equipment will remain with CDPH. The equipment will be delivered to the Contractor's address, as stated on the face of the Agreement, unless the Contractor notifies the CDPH Program Contract Manager, in writing, of an alternate delivery address.

- (2) All equipment purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.
- (3) Nonprofit organizations and commercial businesses, shall use a procurement system that meets the following standards:
 - (a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
 - (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
 - (c) Procurements shall be conducted in a manner that provides for all of the following:
 - [1] Avoid purchasing unnecessary or duplicate items.
 - [2] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
 - [3] Take positive steps to utilize small and veteran owned businesses.
- d. Unless waived or otherwise stipulated in writing by CDPH, prior written authorization from the appropriate CDPH Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by CDPH, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- e. In special circumstances, determined by CDPH (e.g., when CDPH has a need to monitor certain purchases, etc.), CDPH may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. CDPH reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that CDPH determines to be unnecessary in carrying out performance under this Agreement.
- f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.
- h. CDPH may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

4. Equipment Ownership / Inventory / Disposition

(Applicable to agreements in which equipment and/or property is furnished by CDPH and/or when said items are purchased or reimbursed with state or federal funds.)

- a. Wherever the terms equipment and/or property are used in Provision 4, the definitions in Provision 3, Paragraph a, shall apply.

Unless otherwise stipulated in this Agreement, all equipment and/or property that are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement shall be considered state equipment and the property of CDPH.

- (1) CDPH requires the reporting, tagging and annual inventorying of all equipment and/or property that is furnished by CDPH or purchased/reimbursed with funds provided through this Agreement.

Upon receipt of equipment and/or property, the Contractor shall report the receipt to the CDPH Program Contract Manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by CDPH's Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with CDPH Funds) does not accompany this Agreement, Contractor shall request a copy from the CDPH Program Contract Manager.

- (2) If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or property to the CDPH Program Contract Manager using a form or format designated by CDPH's Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of CDPH-Funded Equipment) does not accompany this Agreement, Contractor shall request a copy from the CDPH Program Contract Manager. Contractor shall:

- (a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
- (b) Submit the inventory report to CDPH according to the instructions appearing on the inventory form or issued by the CDPH Program Contract Manager.
- (c) Contact the CDPH Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by CDPH's Asset Management Unit.

- b. Title to state equipment and/or property shall not be affected by its incorporation or attachment to any property not owned by the State.

- c. Unless otherwise stipulated, CDPH shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.

- d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.

- (1) In administering this provision, CDPH may require the Contractor and/or Subcontractor to repair or replace, to CDPH's satisfaction, any damaged, lost or stolen state equipment and/or property. Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the CDPH Program Contract Manager.

- e. Unless otherwise stipulated by the program funding this Agreement, equipment and/or property purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, shall only be used for performance of this Agreement or another CDPH agreement.

- f. Within sixty (60) calendar days prior to the termination or end of this Agreement, the Contractor shall provide a final inventory report of equipment and/or property to the CDPH Program Contract Manager and

shall, at that time, query CDPH as to the requirements, including the manner and method, of returning state equipment and/or property to CDPH. Final disposition of equipment and/or property shall be at CDPH expense and according to CDPH instructions. Equipment and/or property disposition instructions shall be issued by CDPH immediately after receipt of the final inventory report. At the termination or conclusion of this Agreement, CDPH may at its discretion, authorize the continued use of state equipment and/or property for performance of work under a different CDPH agreement.

g. Motor Vehicles

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH under this Agreement.)

- (1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, within thirty (30) calendar days prior to the termination or end of this Agreement, the Contractor and/or Subcontractor shall return such vehicles to CDPH and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to CDPH.
- (2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this Agreement.
- (3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.
- (4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, the Contractor and/or Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this Agreement or any extension period during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

Automobile Liability Insurance

- (a) The Contractor, by signing this Agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, to the Contractor and/or Subcontractor.
- (b) The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the CDPH Program Contract Manager. The certificate of insurance shall identify the CDPH contract or agreement number for which the insurance applies.
- (c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this Agreement or until such time as the motor vehicle is returned to CDPH.
- (d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this Agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.
- (e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:

[1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior

written notice to the State (California Department of Public Health (CDPH)).

- [2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this Agreement and any extension or continuation of this Agreement.
- [3] The insurance carrier shall notify CDPH, in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to each agreement number for which the insurance was obtained.
- (f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by CDPH, in writing, if this provision is applicable to this Agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.
- (g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, CDPH may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

5. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services costing \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.
- (1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.
- (2) The State may identify the information needed to fulfill this requirement.
- (3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
- (a) A local governmental entity or the federal government,
 - (b) A State college or university from any State,
 - (c) A Joint Powers Authority,
 - (d) An auxiliary organization of a California State University or a California community college,
 - (e) A foundation organized to support the Board of Governors of the California Community Colleges,
 - (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
 - (g) Entities of any type that will provide subvention aid or direct services to the public,
 - (h) Entities and/or service types identified as exempt from advertising in State Contracting Manual 5.80. View this publication at the following Internet address:
<http://www.ols.dgs.ca.gov/Contract+Manual/Chapters4through6.htm>.
 - (i) Entities whose name and budgeted costs have been submitted to CDPH in response to a competitive solicitation.
- b. CDPH reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.

- (1) Upon receipt of a written notice from CDPH requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by CDPH.
- c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of CDPH. CDPH may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by CDPH.
- d. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by CDPH, make copies available for approval, inspection, or audit.
- e. CDPH assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.
- f. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.
- g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.
- h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from CDPH to the Contractor, to permit CDPH or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
- i. Unless otherwise stipulated in writing by CDPH, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.
- j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, and 31 or other numbered provisions herein that deemed applicable.

6. Income Restrictions

Unless otherwise stipulated in this Agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to CDPH, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by CDPH under this Agreement.

7. Audit and Record Retention

(Applicable to agreements in excess of \$10,000.)

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that CDPH, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this

Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).

- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (1) or (2) below.
 - (1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
 - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.
- g. The Contractor shall, if applicable, comply with the Single Audit Act and the audit reporting requirements set forth in OMB Circular A-133.

8. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

9. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

- a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
- b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.
- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

- d. CDPH has the option to invalidate or cancel the Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

10. Intellectual Property Rights

a. Ownership

- (1) Except where CDPH has agreed in a signed writing to accept a license, CDPH shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.
- (2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
 - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.
- (3) In the performance of this Agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of CDPH's Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of CDPH's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of CDPH. **Except as otherwise set forth herein, neither the Contractor nor CDPH shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to CDPH, Contractor agrees to abide by all license and confidentiality restrictions applicable to CDPH in the third-party's license agreement.
- (4) Contractor agrees to cooperate with CDPH in establishing or maintaining CDPH's exclusive rights in the Intellectual Property, and in assuring CDPH's sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to CDPH all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or CDPH and which result directly or indirectly from this Agreement or any subcontract.
- (5) Contractor further agrees to assist and cooperate with CDPH in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce CDPH's Intellectual Property rights and interests.

b. Retained Rights / License Rights

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Agreement. Contractor hereby grants to CDPH, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.
- (2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of CDPH or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

c. Copyright

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Paragraph a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to CDPH to any work product made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.
- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement, shall include CDPH's notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2007, etc.], Department of Public Health. This material may not be reproduced or disseminated without prior written permission from the Department of Public Health." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Patent Rights

With respect to inventions made by Contractor in the performance of this Agreement, which did not result from research and development specifically included in the Agreement's scope of work, Contractor hereby grants to CDPH a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the Agreement's scope of work, then Contractor agrees to assign to CDPH, without additional compensation, all its right, title and interest in and to such inventions and to assist CDPH in securing United States and foreign patents with respect thereto.

e. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining CDPH's prior written approval; and (ii) granting to or obtaining for CDPH, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon the these terms is unattainable, and CDPH determines that the Intellectual Property should be included in or is required for Contractor's performance of this Agreement, Contractor shall obtain a license under terms acceptable to CDPH.

f. Warranties

- (1) Contractor represents and warrants that:
 - (a) It is free to enter into and fully perform this Agreement.
 - (b) It has secured and will secure all rights and licenses necessary for its performance of this Agreement.
 - (c) Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.
 - (d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
 - (e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
 - (f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to CDPH in this Agreement.
 - (g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
 - (h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.
- (2) CDPH MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

g. Intellectual Property Indemnity

- (1) Contractor shall indemnify, defend and hold harmless CDPH and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDPH's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. CDPH reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDPH.

- (2) Should any Intellectual Property licensed by the Contractor to CDPH under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve CDPH's right to use the licensed Intellectual Property in accordance with this Agreement at no expense to CDPH. CDPH shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for CDPH to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, CDPH shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- (3) Contractor agrees that damages alone would be inadequate to compensate CDPH for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges CDPH would suffer irreparable harm in the event of such breach and agrees CDPH shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

h. Federal Funding

In any agreement funded in whole or in part by the federal government, CDPH may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the Agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

i. Survival

The provisions set forth herein shall survive any termination or expiration of this Agreement or any project schedule.

11. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of \$100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

12. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior CDPH approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this Agreement and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this Agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

13. Confidentiality of Information

- a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the

Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.

- b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
- c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDPH Program Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.
- d. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than CDPH without prior written authorization from the CDPH Program Contract Manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.
- f. As deemed applicable by CDPH, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

14. Documents, Publications and Written Reports

(Applicable to agreements over \$5,000 under which publications, written reports and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contractual communications) prepared as a requirement of this Agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts or agreements and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds \$5,000.

15. Dispute Resolution Process

- a. A Contractor grievance exists whenever there is a dispute arising from CDPH's action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDPH, the Contractor must seek resolution using the procedure outlined below.
 - (1) The Contractor should first informally discuss the problem with the CDPH Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
 - (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.

- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Division 2, Chapter 2, Article 3 (commencing with Section 1140) of the California Code of Regulations).
- c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the Agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.
- d. Unless otherwise stipulated in writing by CDPH, all dispute, grievance and/or appeal correspondence shall be directed to the CDPH Program Contract Manager.
- e. There are organizational differences within CDPH's funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDPH Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

16. Financial and Compliance Audit Requirements

- a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.
- b. Direct service contract means a contract or agreement for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code section 38020). Direct service contracts shall not include contracts, agreements, grants, or subventions to other governmental agencies or units of government nor contracts or agreements with regional centers or area agencies on aging (H&S Code section 38030).
- c. The Contractor, as indicated below, agrees to obtain one of the following audits:
 - (1) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives \$25,000 or more from any State agency under a direct service contract or agreement; the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
 - (2) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives less than \$25,000 per year from any State agency under a direct service contract or agreement, the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this Agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
 - (3) If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends \$500,000 or more in Federal awards, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:
 - (a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or

- (b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.
- (4) If the Contractor submits to CDPH a report of an audit other than an OMB A-133 audit, the Contractor must also submit a certification indicating the Contractor has not expended \$500,000 or more in federal funds for the year covered by the audit report.
- d. Two copies of the audit report shall be delivered to the CDPH program funding this Agreement. The audit report must identify the Contractor's legal name and the number assigned to this Agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the CDPH Program Contract Manager shall forward the audit report to CDPH's Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.
 - e. The cost of the audits described herein may be included in the funding for this Agreement up to the proportionate amount this Agreement represents of the Contractor's total revenue. The CDPH program funding this Agreement must provide advance written approval of the specific amount allowed for said audit expenses.
 - f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.
 - g. Nothing in this Agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.
 - h. Nothing in this provision limits the authority of the State to make audits of this Agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.
 - i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.
 - j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.
 - k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

17. Human Subjects Use Requirements

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this Agreement, Contractor agrees that if any performance under this Agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

18. Novation Requirements

If the Contractor proposes any novation agreement, CDPH shall act upon the proposal within 60 days after receipt of the written proposal. CDPH may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, CDPH will initiate an amendment to this Agreement to formally implement the approved proposal.

19. Debarment and Suspension Certification

(Applicable to all agreements funded in part or whole with federal funds.)

- a. By signing this Agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
- b. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
 - (4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
 - (5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
 - (6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the CDPH Program Contract Manager.
- d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
- e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the CDPH may terminate this Agreement for cause or default.

20. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be

permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.

- b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- c. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.
- d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

21. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, CDPH shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

22. Payment Withholds

(Applicable only if a final report is required by this Agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this Agreement, CDPH may, at its discretion, withhold 10 percent (10%) of the face amount of the Agreement, 50 percent (50%) of the final invoice, or \$3,000 whichever is greater, until CDPH receives a final report that meets the terms, conditions and/or scope of work requirements of this Agreement.

23. Performance Evaluation

(Not applicable to grant agreements.)

CDPH may, at its discretion, evaluate the performance of the Contractor at the conclusion of this Agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with CDPH. Negative performance evaluations may be considered by CDPH prior to making future contract awards.

24. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this Agreement if made with a corporation for its general benefits.

25. Four-Digit Date Compliance

(Applicable to agreements in which Information Technology (IT) services are provided to CDPH or if IT equipment is procured.)

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

26. Prohibited Use of State Funds for Software

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

27. Use of Small, Minority Owned and Women's Businesses

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

- (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- (5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

28. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements.)

By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

29. Union Organizing

(Applicable only to grant agreements.)

Grantee, by signing this Agreement, hereby acknowledges the applicability of Government Code Sections 16645 through 16649 to this Agreement. Furthermore, Grantee, by signing this Agreement, hereby certifies that:

- a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.
- b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.

- c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.
- d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

30. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, CDPH sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

- a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
- b. As used herein, fringe benefits do not include:
 - (1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
 - (2) Director's and executive committee member's fees.
 - (3) Incentive awards and/or bonus incentive pay.
 - (4) Allowances for off-site pay.
 - (5) Location allowances.
 - (6) Hardship pay.
 - (7) Cost-of-living differentials
- c. Specific allowable fringe benefits include:
 - (1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- d. To be an allowable fringe benefit, the cost must meet the following criteria:
 - (1) Be necessary and reasonable for the performance of the Agreement.
 - (2) Be determined in accordance with generally accepted accounting principles.
 - (3) Be consistent with policies that apply uniformly to all activities of the Contractor.
- e. Contractor agrees that all fringe benefits shall be at actual cost.
- f. Earned/Accrued Compensation
 - (1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.
 - (2) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Provision f (3)(b) for an example.
 - (3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) **Example No. 1:**

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

(b) **Example No. 2:**

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

(c) **Example No. 3:**

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to CDPH, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

31. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded agreements in excess of \$100,000 per Section 1352 of the 31, U.S.C.)

a. Certification and Disclosure Requirements

- (1) Each person (or recipient) who requests or receives a contract or agreement, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.
- (2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract, or grant or any extension or amendment of that contract, or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.
- (3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
 - (b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or
 - (c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.
- (4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract or agreement, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or agreement, or grant shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to CDPH Program Contract Manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan, or cooperative agreement.

32. **Additional Restrictions**

(Applicable to all contracts funded in whole or in part with funding from the federal Departments of Labor, Health and Human Services (including CDC funding), or Education.)

Contractor shall comply with the restrictions under Division F, Title V, Section 503 of the Consolidated Appropriations Act, 2012 (H.R. 2055), which provides that:

“SEC. 503.(a) No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111–148 shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation to the Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government, except in presentation to the executive branch of any State or local government itself.

(b) No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111–148 shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

(c) The prohibitions in subsections (a) and (b) shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.”

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH
CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Contractor	Printed Name of Person Signing for Contractor
Contract / Grant Number	Signature of Person Signing for Contractor
Date	Title

After execution by or on behalf of Contractor, please return to:

California Department of Public Health
Office of AIDS, MS 7700
1616 Capitol Avenue, MS 7700
Sacramento, CA 95814

CDPH reserves the right to notify the contractor in writing of an alternate submission address.

CERTIFICATION REGARDING LOBBYING

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

Approved by OMB
0348-0046

<p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action:</p> <p><input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award</p>	<p>3. Report Type:</p> <p><input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change</p> <p>For Material Change Only: Year ____ quarter ____ date of last report ____.</p>
<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier ____, if known:</p> <p>Congressional District, If known:</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, If known:</p>	
<p>6. Federal Department/Agency</p>	<p>7. Federal Program Name/Description:</p> <p>CDFA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p>\$ _____</p>	
<p>10.a. Name and Address of Lobbying Registrant (If individual, last name, first name, MI):</p>	<p>b. Individuals Performing Services (including address if different from 10a. (Last name, First name, MI):</p>	
<p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. required disclosure shall be subject to a not more than \$100,000 for each such failure.</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p>	
<p>Federal Use Only</p>		<p>Authorized for Local Reproduction Standard Form-LLL (Rev. 7-97)</p>

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Exhibit E
Additional Provisions

1. Cancellation / Termination

- A. This agreement may be cancelled or terminated without cause by either party by giving 30 calendar days advance written notice to the other party. Such notification shall state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements.
- B. Upon receipt of a notice of termination or cancellation from California Department of Public Health/Office of AIDS (OA), the Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent contract costs.
- C. The Contractor shall be entitled to payment for all allowable costs authorized under this agreement, including authorized non-cancelable obligations incurred up to the date of termination or cancellation, provided such expenses do not exceed the maximum amounts payable.

2. Avoidance of Conflicts of Interest by Contractor

- A. OA intends to avoid any real or apparent conflict of interest on the part of the Contractor subcontractors, or employees, officers, and directors of the Contractor or subcontractors. Thus, OA reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to OA review and prior approval.
- B. Conflicts of interest include, but are not limited to:
 - a. An instance where the Contractor or any of its subcontractors, or any employee, officer, or director of the Contractor or any subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the agreement would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the agreement.
 - b. An instance where the Contractor or any subcontractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.
- C. If OA is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five working days from the date of notification of the conflict by OA to provide

Exhibit E
Additional Provisions

complete information regarding the suspected conflict. If a conflict of interest is determined to exist by OA and cannot be resolved to the satisfaction of OA, the conflict will be grounds for terminating the agreement. OA may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.

3. Research

- A. The Contractor shall obtain written approval from the State before allowing research or evaluation of existing data for example, participant records.
- B. The Contractor shall obtain written approvals from the State and the Committee for the Protection of Human Subjects before allowing research or evaluation involving clients (for example, through face-to-face or telephone interviews, or questionnaires in person or by mail). Forms for informed consent and release of information must be available and signed prior to implementation of any research or evaluation.

4. Additional Incorporated Documents

- A. The following documents and any subsequent updates are not attached, but are incorporated herein and made a part hereof by this reference. These documents may be updated periodically by CDPH, as required by program directives. CDPH shall provide the Contractor with copies of said documents and any periodic updates thereto, under separate cover. CDPH will maintain on file, all documents referenced herein and any subsequent updates.

- 1) CDPH Health Administrative Manual Section 6-1000
- 2) MCWP Protocols (MCWPP)
- 3) Program Operations Manual (POM)
- 4) Medi-Cal Inpatient/Outpatient Provider Manual Part 1 - Program and Eligibility
- 5) Medi-Cal Inpatient/Outpatient Provider Manual Part 2 - AIDS Waiver Program
- 6) State Medicaid Operations Manual Chapter 4, Section 4000
- 7) Title 42, Code of Federal Regulations (CFR), Section 441.300 et al
- 8) Title 45, CFR, Subtitle A, Part 74

Exhibit F
HIPAA Business Associate Exhibit

I. Recitals

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations:").
- B. The California Department of Public Health ("CDPH") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI") pursuant to HIPAA regulations.
- C. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- D. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- E. As set forth in this Agreement Contractor is the Business Associate of CDPH that provides services, arranges, performs or assists in the performance of functions or activities on behalf of CDPH and creates, receives, maintains, transmits, uses or discloses PHI.
- F. CDPH and Business Associate desire to protect the privacy and provide for the security of PHI created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations.
- G. The purpose of this Exhibit is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations, and other applicable laws.
- H. The terms used in this Exhibit, but not otherwise defined, shall have the same meanings as those terms are defined in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

Exhibit F
HIPAA Business Associate Exhibit

II. Permitted Uses and Disclosures of PHI by Business Associate

- A. **Permitted Uses and Disclosures.** Except as otherwise indicated in this Exhibit, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of CDPH, provided that such use or disclosure would not violate the HIPAA regulations, if done by CDPH.
- B. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Exhibit, Business Associate may:
- 1) **Use and disclose for management and administration.** Use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.
 - 2) **Provision of Data Aggregation Services.** Use PHI to provide data aggregation services to CDPH. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of CDPH with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of CDPH.

III. Responsibilities of Business Associate

Business Associate agrees:

- A. **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- B. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of CDPH; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section C, Security, below. Business Associate will provide CDPH with its current and updated policies.
- C. **Security.** The Business Associate shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing CDPH PHI. These steps shall include, at a minimum:
- 1) complying with all of the data system security precautions listed in the Business Associate Data Security Standards set forth in Attachment 1 to this Exhibit;

Exhibit F
HIPAA Business Associate Exhibit

- 2) providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and

In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to CDPH PHI from breaches and security incidents.

- D. **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Exhibit.
- E. **Business Associate's Agents.** To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of CDPH, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including implementation of reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI; and to incorporate, when applicable, the relevant provisions of this Exhibit into each subcontract or subaward to such agents or subcontractors.
- F. **Availability of Information to CDPH and Individuals.** To provide access as CDPH may require, and in the time and manner designated by CDPH (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to CDPH (or, as directed by CDPH), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for CDPH that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for CDPH health care component health plans; or those records used to make decisions about individuals on behalf of CDPH. Business Associate shall use the forms and processes developed by CDPH for this purpose and shall respond to requests for access to records transmitted by CDPH within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
- G. **Amendment of PHI.** To make any amendment(s) to PHI that CDPH directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by CDPH.
- H. **Internal Practices.** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from CDPH, or created or received by Business Associate on behalf of CDPH, available to CDPH or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by CDPH or by the Secretary, for purposes of determining CDPH's compliance with the HIPAA regulations.
- I. **Documentation of Disclosures.** To document and make available to CDPH or (at the direction of CDPH) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.

Exhibit F

HIPAA Business Associate Exhibit

J. Notification of Breach. During the term of this Agreement:

- 1) **Discovery of Breach.** To notify CDPH *immediately by telephone call plus email or fax* upon the discovery of breach of security of PHI in computerized form if the PHI was, or is reasonably believed to have been, acquired by an unauthorized person, or **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Exhibit, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the CDPH ITSD Help Desk. Business Associate shall take:
 - i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
 - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- 2) **Investigation of Breach.** To immediately investigate such security incident, breach, or unauthorized use or disclosure of PHI or confidential data. **Within 72 hours of the discovery**, to notify the CDPH Program Contract Manager(s), the CDPH Privacy Officer, and the CDPH Chief Information Security Officer of:
 - i. What data elements were involved and the extent of the data involved in the breach,
 - ii. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data,
 - iii. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized,
 - iv. A description of the probable causes of the improper use or disclosure; and
 - v. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
- 3) **Written Report.** To provide a written report of the investigation to the CDPH Program Contract Managers, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
- 4) **Notification of Individuals.** To notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and to pay any costs of such notifications, as well as any costs associated with the breach. The CDPH Program Contract Managers, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer shall approve the time, manner and content of any such notifications.

Exhibit F

HIPAA Business Associate Exhibit

- 5) **CDPH Contact Information.** To direct communications to the above referenced CDPH staff, the Contractor shall initiate contact as indicated herein. CDPH reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Exhibit or the Agreement to which it is incorporated.

CDPH Program Contract Manager	CDPH Privacy Officer	CDPH Chief Information Security Officer
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer Privacy Office, c/o Office of Legal Services California Department of Public Health P.O. Box 997377, MS 0505 Sacramento, CA 95899-7377 Email: privacy@cdph.ca.gov Telephone: (916) 440-7671	Chief Information Security Officer Information Security Office California Department of Public Health P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413 Email: cdphiso@cdph.ca.gov Telephone: IT Service Desk (916) 440-7000 or (800) 579-0874

- K. **Employee Training and Discipline.** To train and use reasonable measures to ensure compliance with the requirements of this Exhibit by employees who assist in the performance of functions or activities on behalf of CDPH under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Exhibit, including by termination of employment. In complying with the provisions of this section K, Business Associate shall observe the following requirements:

- 1) Business Associate shall provide information privacy and security training, at least annually, at its own expense, to all its employees who assist in the performance of functions or activities on behalf of CDPH under this Agreement and use or disclose PHI.
- 2) Business Associate shall require each employee who receives information privacy and security training to sign a certification, indicating the employee's name and the date on which the training was completed.
- 3) Business Associate shall retain each employee's written certifications for CDPH inspection for a period of three years following contract termination.

IV. Obligations of CDPH

CDPH agrees to:

- A. **Notice of Privacy Practices.** Provide Business Associate with applicable and relevant Notice(s) of Privacy Practices that CDPH HIPAA-covered healthcare components produce in accordance with 45 CFR 164.520, as well as any changes to such notice(s).
- B. **Permission by Individuals for Use and Disclosure of PHI.** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.

Exhibit F

HIPAA Business Associate Exhibit

- C. **Notification of Restrictions.** Notify the Business Associate of any restriction to the use or disclosure of PHI that CDPH has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. **Requests Conflicting with HIPAA Rules.** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by CDPH.

V. Audits, Inspection and Enforcement

From time to time, CDPH may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Exhibit. Business Associate shall promptly remedy any violation of any provision of this Exhibit and shall certify the same to the CDPH Privacy Officer or the CDPH Chief Information Security Officer in writing. The fact that CDPH inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Exhibit, nor does CDPH's:

- A. Failure to detect or
- B. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of CDPH's enforcement rights under this Agreement and this Exhibit.

VI. Termination

- A. **Termination for Cause.** Upon CDPH's knowledge of a material breach of this Exhibit by Business Associate, CDPH shall:
 - 1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by CDPH;
 - 2) Immediately terminate this Agreement if Business Associate has breached a material term of this Exhibit and cure is not possible; or
 - 3) If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.
- B. **Judicial or Administrative Proceedings.** Business Associate will notify CDPH if it is named as a defendant in a criminal proceeding for a violation of HIPAA. CDPH may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. CDPH may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- C. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Business Associate shall promptly return or destroy all PHI received from CDPH (or created or received by Business Associate on behalf of CDPH) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, shall continue to extend the protections of this Exhibit to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

Exhibit F
HIPAA Business Associate Exhibit

VII. Miscellaneous Provisions

- A. **Disclaimer.** CDPH makes no warranty or representation that compliance by Business Associate with this Exhibit, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Exhibit may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon CDPH's request, Business Associate agrees to promptly enter into negotiations with CDPH concerning an amendment to this Exhibit embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. CDPH may terminate this Agreement upon thirty (30) days written notice in the event:
- 1) Business Associate does not promptly enter into negotiations to amend this Exhibit when requested by CDPH pursuant to this Section or
 - 2) Business Associate does not enter into an amendment providing assurances regarding the safeguarding and security of PHI that CDPH in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to CDPH at no cost to CDPH to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CDPH, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- D. **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than CDPH or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. **Interpretation.** The terms and conditions in this Exhibit shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Exhibit shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- F. **Regulatory References.** A reference in the terms and conditions of this Exhibit to a section in the HIPAA regulations means the section as in effect or as amended.
- G. **Survival.** The respective rights and obligations of Business Associate under Section VII.C of this Exhibit shall survive the termination or expiration of this Agreement.

Exhibit F

HIPAA Business Associate Exhibit

- H. ***No Waiver of Obligations.*** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

Exhibit F
HIPAA Business Associate Exhibit

Attachment 1
Business Associate Data Security Standards

1. General Security Controls

- A. **Confidentiality Statement.** All persons that will be working with CDPH PHI must sign a confidentiality statement. The statement must include at a minimum, General Use, Security and Privacy safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to CDPH PHI. The statement must be renewed annually. The Business Associate shall retain each person's written confidentiality statement for CDPH inspection for a period of three (3) years following contract termination.
- B. **Background check.** Before a member of the Business Associate's workforce may access CDPH PHI, Business Associate must conduct a thorough background check of that worker and evaluate the results to assure that there is no indication that the worker may present a risk for theft of confidential data. The Business Associate shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.
- C. **Workstation/Laptop encryption.** All workstations and laptops that process and/or store CDPH PHI must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. The encryption solution must be full disk unless approved by the CDPH Information Security Office.
- D. **Server Security.** Servers containing unencrypted CDPH PHI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- E. **Minimum Necessary.** Only the minimum necessary amount of CDPH PHI required to perform necessary business functions may be copied, downloaded, or exported.
- F. **Removable media devices.** All electronic files that contain CDPH PHI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher
- G. **Antivirus software.** All workstations, laptops and other systems that process and/or store CDPH PHI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- H. **Patch Management.** All workstations, laptops and other systems that process and/or store CDPH PHI must have security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation

Exhibit F
HIPAA Business Associate Exhibit

timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.

- I. **User IDs and Password Controls.** All users must be issued a unique user name for accessing CDPH PHI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Must be at least eight characters. Must be a non-dictionary word. Must not be stored in readable format on the computer. Must be changed every 60 days. Must be changed if revealed or compromised. Must be composed of characters from at least three of the following four groups from the standard keyboard:
 - Upper case letters (A-Z)
 - Lower case letters (a-z)
 - Arabic numerals (0-9)
 - Non-alphanumeric characters (punctuation symbols)
- J. **Data Sanitization.** All CDPH PHI must be sanitized using NIST Special Publication 800-88 standard methods for data sanitization when the CDPH PSCI is no longer needed.

2. System Security Controls

- A. **System Timeout.** The system must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- B. **Warning Banners.** All systems containing CDPH PHI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only. User must be directed to log off the system if they do not agree with these requirements.
- C. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for CDPH PHI, or which alters CDPH PHI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If CDPH PHI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- D. **Access Controls.** The system must use role based access controls for all user authentications, enforcing the principle of least privilege.
- E. **Transmission encryption.** All data transmissions of CDPH PHI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. Encryption can be end to end at the network level, or the data files containing CDPH PHI can be encrypted. This requirement pertains to any type of CDPH PHI in motion such as website access, file transfer, and E-Mail.

Exhibit F

HIPAA Business Associate Exhibit

- F. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting CDPH PHI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3. Audit Controls

- A. **System Security Review.** All systems processing and/or storing CDPH PHI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews shall include vulnerability scanning tools.
- B. **Log Reviews.** All systems processing and/or storing CDPH PHI must have a routine procedure in place to review system logs for unauthorized access.
- C. **Change Control.** All systems processing and/or storing CDPH PHI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4. Business Continuity / Disaster Recovery Controls

- a. **Disaster Recovery.** Business Associate must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic CDPH PHI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this agreement for more than 24 hours.

Data Backup Plan. Business Associate must have established documented procedures to backup CDPH PHI to maintain retrievable exact copies of CDPH PHI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and the amount of time to restore CDPH PHI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of CDPH data.

5. Paper Document Controls

- A. **Supervision of Data.** CDPH PHI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. CDPH PHI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- B. **Escorting Visitors.** Visitors to areas where CDPH PHI is contained shall be escorted and CDPH Protected Health Information shall be kept out of sight while visitors are in the area.
- C. **Confidential Destruction.** CDPH PHI must be disposed of through confidential means, using NIST Special Publication 800-88 standard methods for data sanitization when the CDPH PSCI is no longer needed.

Exhibit F

HIPAA Business Associate Exhibit

- D. **Removal of Data.** CDPH PHI must not be removed from the premises of the Business Associate except with express written permission of CDPH.
- E. **Faxing.** Faxes containing CDPH PHI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending.
- F. **Mailing.** CDPH PHI shall only be mailed using secure methods. Large volume mailings of CDPH Protected Health Information shall be by a secure, bonded courier with signature required on receipt. Disks and other transportable media sent through the mail must be encrypted with a CDPH approved solution, such as a solution using a vendor product specified on the CSSI.

Darfur Contracting Act

Pursuant to Public Contract Code (PCC) sections 10475-10481, the Darfur Contracting Act's intent is to preclude State agencies from contracting with scrutinized companies that do business in the African nation of Sudan. A scrutinized company is a company doing specified types of business in Sudan as defined in PCC section 10476. Scrutinized companies are ineligible to, and cannot, contract with a State agency for goods or services (PCC section 10477(a)) unless obtaining permission from the Department of General Services according to the criteria set forth in PCC section 10477(b).

Therefore, to be eligible to contract with the California Department of Public Health, please initial one of the following three paragraphs and complete the certification below:

1. _____ We do not currently have, or we have not had within the previous
Initials three years, business activities or other operations outside of the United States.

OR

2. _____ We are a scrutinized company as defined in Public Contract Code
Initials section 10476, but we have received written permission from the Department of General Services (DGS) to submit a bid or proposal pursuant to Public Contract Code section 10477(b) or submit a contract/purchase order. A copy of the written permission from DGS is included with our bid, proposal or contract/purchase order.

OR

3. _____ We currently have, or we have had within the previous three years,
Initials business activities or other operations outside of the United States, but we certify below that we are not a scrutinized company as defined in Public Contract Code section 10476.

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind this company to the clause listed above. This certification is made under the laws of the State of California.

<i>Company Name (Printed)</i> Stanislaus County Health Services Agency	<i>Federal ID Number</i> 94-6000540
<i>By (Authorized Signature)</i> 	
<i>Printed Name and Title of Person Signing</i> Mary Ann Lee, Managing Director	
<i>Date Executed</i> 	<i>Executed in the County and State of</i> Stanislaus, California

certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations,

or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

- 1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

- 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

PAYEE DATA RECORD(Required when receiving payment from the State of California in lieu of IRS W-9)
STD. 204 (Rev. 5/06)_CDPH

1	INSTRUCTIONS: Complete all information on this form. Sign, date, and return to the State agency (department/office) address shown at the bottom of this page. Prompt return of this fully completed form will prevent delays when processing payments. Information provided in this form will be used by State agencies to prepare Information Returns (1099). See reverse side for more information and Privacy Statement. NOTE: Governmental entities, federal, state, and local (including school districts), are not required to submit this form.		
2	PAYEE'S LEGAL BUSINESS NAME (Type or Print) Stanislaus County Health Services Agency		
	SOLE PROPRIETOR—ENTER NAME AS SHOWN ON SSN (Last, First, M.I.)		E-MAIL ADDRESS
	MAILING ADDRESS 830 Scenic Drive		BUSINESS ADDRESS
	CITY, STATE, ZIP CODE Modesto, CA 95350		CITY, STATE, ZIP CODE
3	ENTER FEDERAL EMPLOYER IDENTIFICATION NUMBER (FEIN): <input style="width: 15px; height: 15px;" type="text"/> - <input style="width: 15px; height: 15px;" type="text"/> <input style="width: 15px; height: 15px;" type="text"/> <input style="width: 15px; height: 15px;" type="text"/> <input style="width: 15px; height: 15px;" type="text"/> <input style="width: 15px; height: 15px;" type="text"/> <input style="width: 15px; height: 15px;" type="text"/>		NOTE: Payment will not be processed without an accompanying taxpayer I.D. number.
PAYEE ENTITY TYPE CHECK ONE BOX ONLY	<input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> ESTATE OR TRUST <input type="checkbox"/> INDIVIDUAL OR SOLE PROPRIETOR ENTER SOCIAL SECURITY NUMBER: <input style="width: 15px; height: 15px;" type="text"/> - <input style="width: 15px; height: 15px;" type="text"/> - <input style="width: 15px; height: 15px;" type="text"/>		
	CORPORATION: <input type="checkbox"/> MEDICAL (e.g., dentistry, psychotherapy, chiropractic, etc.) <input type="checkbox"/> LEGAL (e.g., attorney services) <input type="checkbox"/> EXEMPT (nonprofit) <input checked="" type="checkbox"/> ALL OTHERS		
	(SSN required by authority of California Revenue and Tax Code Section 18646)		
4	PAYEE RESIDENCY TYPE <input checked="" type="checkbox"/> California resident—qualified to do business in California or maintains a permanent place of business in California. <input type="checkbox"/> California nonresident (see reverse side)—Payments to nonresidents for services may be subject to State income tax withholding. <input type="checkbox"/> No services performed in California. <input type="checkbox"/> Copy of Franchise Tax Board waiver of State withholding attached.		
5	I hereby certify under penalty of perjury that the information provided on this document is true and correct. Should my residency status change, I will promptly notify the State agency below.		
	AUTHORIZED PAYEE REPRESENTATIVE'S NAME (Type or Print) Mary Ann Lee		TITLE Managing Director
	SIGNATURE	DATE	TELEPHONE (209) 558-7163
6	Please return completed form to: Department/Office: California Department of Public Health <hr/> Unit/Section: <hr/> Mailing Address: <hr/> City/State/ZIP: <hr/> Telephone: () FAX: () <hr/> E-Mail Address: <hr/>		