

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 10/2018)

AGREEMENT NUMBER

PURCHASING AUTHORITY NUMBER (If Applicable)

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

CONTRACTING AGENCY NAME

California Department of Public Health (the State)

CONTRACTOR NAME

Logistics Health, Inc. (the Contractor)

2. The term of this Agreement is:

START DATE

April 21, 2020

THROUGH END DATE

June 20, 2020

3. The maximum amount of this Agreement is:

\$100 Million (not-to-exceed)

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

EXHIBITS	TITLE	PAGES
Exhibit A	Statement of Work	TBD
Exhibit A.1	Attachment 1	TBD
Exhibit B	Payment Provisions	TBD
+ - Exhibit C	General Terms and Conditions (GTC 04/2017)	4
+ - Exhibit D	Special Provisions	TBD
+ - Exhibit E	FEMA Provisions	6
+ -		
+ - Certifications	Contractor's certifications for Contractor Certification Clauses (CCC 04/2017), the Darfur Contracting Act, the Iran Contracting Act, and California Civil Rights Laws, are hereby incorporated by reference and made a part of this agreement as if attached hereto	TBD

Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at www.dgs.ca.gov/ols/resources/standardcontractlanguage.aspx

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

Logistics Health, Inc.

CONTRACTOR BUSINESS ADDRESS

328 Front Street South

CITY

La Crosse

STATE

WI

ZIP

54601

PRINTED NAME OF PERSON SIGNING


Anne Therese Finch

TITLE

Chief Executive Officer

CONTRACTOR AUTHORIZED SIGNATURE

Anne Finch

 Digitally signed by Anne Finch
Date: 2020.04.22 12:53:03 -05'00'

DATE SIGNED

[Reset Form](#)[Print Form](#)

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STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

California Department of Public Health

CONTRACTING AGENCY ADDRESS

CITY

STATE
CA

ZIP

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTING AGENCY AUTHORIZED SIGNATURE

Timothy BowDigitally signed by Timothy Bow
Date: 2020.04.22 11:10:44 -07'00'

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

EXHIBIT A STATEMENT OF WORK

This Agreement is for specimen collection and testing services for COVID-19 Response Efforts, pursuant to the Governor's Emergency Declaration. This Agreement is entered into by and between the California Department of Public Health (the "State"), on the one hand, and on the other hand, Logisitics Health, Inc. ("Contractor").

1. AGREEMENT TERM

- A. The term of the agreement shall be from the date of contract execution to the end date as specifically noted on the attached STD 213 Standard Agreement (the "Effective Date"). the State reserves the right to extend this Agreement until thirty (30) days after the lifting of the declaration of the COVID-19 state of emergency.
- B. In addition to any other provision of this Agreement, the State may terminate this Agreement or cancel a portion of the service for any reason with fifteen (15) days written notice.

2. SCOPE

- 1. Contractor shall provide all labor, tools, materials, equipment, and travel expenses to perform specimen collection and testing services in accordance with the terms and conditions of this Agreement. Additional information regarding Contractor is contained in Exhibit A, Attachment 1. The State will opt for the complete delivery model as set forth in section 2.0 of Exhibit A, Attachment 1. In the event of a discrepancy, ambiguity and/or inconsistency between Exhibit A, Attachment 1 and the articles, attachments, or provisions which constitute this Agreement, the State's terms and conditions shall take precedence.
- 2. Contractor shall perform services at the rates identified in Exhibit B.

3. CONTRACTOR INTELLECTUAL PROPERTY

Contractor retains all right, title and interest in and to its proprietary client portal, LHI.Care, the MedNet technology platform, all related data and documentation, all other proprietary processes, procedures and tools used by Contractor to perform the services under this Agreement, and all intellectual property rights therein, including but not limited to all modifications, enhancements, improvements and derivative works thereto (collectively, the "OSHS IP"). No title to or ownership of the OSHS IP are transferred to the State in connection with this Agreement.

4. CONTRACT MANAGEMENT

The Contractor shall provide the State the name, address, telephone number and e-mail address of its Contract Manager directly responsible for managing this Agreement. Should the Contractor's Contract Manager change or any of its contact information change, the Contractor shall provide the State Contract Administrator updated information no later than 24 hours after the date of such change. The Contractor is responsible for notifying the State in writing of any changes to a contact person, address, telephone numbers, or any other information deemed important to the functionality of the Agreement.

State of California Testing Task Force



COVID-19 Sample Collection Sites State of California

POINT OF CONTACT

Lora Gross
Contracts Manager

ADDRESS

Logistics Health, Inc. (LHI)
328 Front Street South
La Crosse, Wisconsin 54601

EMAIL

lgross@logisticshealth.com

PHONE

(866) 284-8788, ext. 56601

FAX

(608) 783-7532

BUSINESS SIZE

Large

SUBMITTED TO

Paul Markovich
Paul.Markovich@blueshieldca.com

Charity Dean

Charity.Dean@cdph.ca.gov

Bob Kocher

bkocher@venrock.com

DATE

April 17, 2020

CAGE CODE

1RTW6

DUNS NUMBER

131468071

1.0 EXECUTIVE SUMMARY

OptumServe Health Services (OSHS), powered by Logistics Health, Inc. (LHI) is pleased to submit this response to the State of California to describe our capabilities to provide COVID-19 Specimen Collection throughout the State. Founded in 1999, OSHS has provided health services nationwide to support both public and private employers requiring occupational, medical, and dental health services. We integrate cost-effective services with professional management and dedication to quality performance measures. As one of the nation's largest administrators of employer-based occupational and regulatory health programs, we provide more than four million services annually in all U.S. states and territories for our Veterans, Military Service members, Government and commercial clients. OSHS designs, implements, and manages a broad spectrum of services through our appointment-based services at medical facilities (in-clinic), mobile events, and Contact Center delivery channels.

In 2019, OSHS coordinated 4.9 million health care services for more than 760,000 individuals. OSHS has a proven track record of providing high quality services, and our commitment to continuous improvement ensures that our service delivery meets and exceeds our clients' expectations. Our strengths are built upon our knowledge and resources combined with proven tools that provide a superior foundation for managing the occupational and health readiness needs of clients nationwide.

OSHS is a trusted partner of Government agencies and industry-leading private sector clients. Services are offered to the OSHS customers listed in **Exhibit 1**.

Exhibit 1: OSHS Programs

Department/Category	Program
Department of Veterans Affairs (VA)	<ul style="list-style-type: none">▪ Veterans Benefits Administration Medical Disability Examinations (VBA MDE)▪ Community Care Network (CCN)
Department of Defense (DoD)	<ul style="list-style-type: none">▪ Reserve Health Readiness Program (RHRP) II, Reserve/Active Components▪ United States Military Entrance Processing Command (USMEPCOM)▪ Global Nurse Advice Line
Department of Health & Human Services (DHHS)	<ul style="list-style-type: none">▪ World Trade Center Health Program, Nationwide Provider Network▪ World Trade Center Health Program, William Street Clinic
Transportation Companies (Commercial)	<ul style="list-style-type: none">▪ BNSF Railway Clinic Based Medical Exams▪ Union Pacific Railroad Occupational Health Services

OSHS is capable of and experienced in providing all COVID-19 collection services required by the State of California. Our unique capabilities are featured in **Exhibit 2**.

Exhibit 2: Unique Capabilities of OSHS

Feature	Benefits to State of California
OSHS brings more than 20 years of experience	<ul style="list-style-type: none"> Improves performance and reduces program risk and costs because staff are immediately available and trained on relevant processes and applicable Standard Operating Procedures (SOPs) Improves performance and reduces costs through in-place suite of tools and processes to support all services Improves performance and client satisfaction by providing experienced, thought leadership in all clinical and non-clinical functions Lowers risk through proven ability to handle high volumes of orders across multiple concurrent task orders
Established network of credentialed, trained health care professionals including phlebotomists, medical technicians, and nurses	<ul style="list-style-type: none"> Improves performance and client satisfaction through service continuity, data accuracy, and timely delivery Reduces costs and risks through established training protocols with the providers in our network Improves performance through exceptional compliance with regulatory requirements to ensure documentation is accurate and efficient Enhances quality and reduces costs by using providers with greater e-capabilities
Proprietary workflow and data management system - MedNet	<ul style="list-style-type: none"> Improves performance by creating an electronic record of services Enhances performance by providing real-time processing and uploading of information Improves quality through automated quality control (QC) checks and proactive issue identification and resolution Improves reporting and quality monitoring by providing detailed management records of all activities, recorded calls, and reportable encounters Improves performance by automating operational processes, sending event task triggers to the appropriate department, allowing for dynamic reprioritization of work, and automatically generating reports and communications

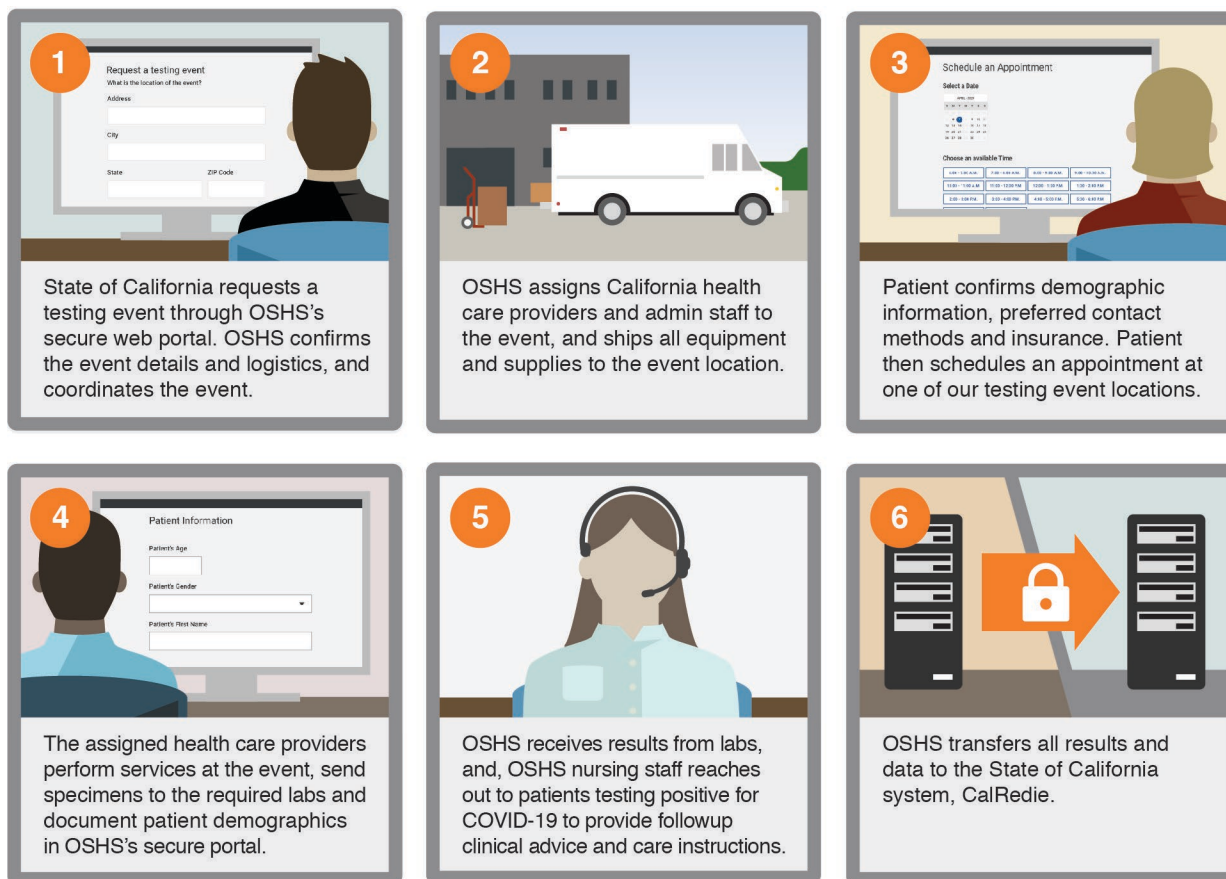
OSHS is a wholly owned subsidiary of Optum Holdings LLC, part of the UnitedHealth Group family of businesses. UnitedHealth Group is a leading, Fortune 6 health and well-being company serving more than 142 million individuals and operating in all 50 states, the District of Columbia, most U.S. territories, and more than 140 countries worldwide. UnitedHealth Group offers some of the nation's largest healthcare networks and healthcare delivery systems with nearly 1.4 million credentialed physicians and other healthcare providers and 6,500 hospitals and other facilities.

2.0 DETAILED EVENT PROCESS

OSHS has established processes for managing and executing events for large groups of patients in need of health care services at the same location, during the same time simultaneously at multiple locations across the country seven (7) days a week. OSHS typically supports events on military installations, drill halls and gymnasiums, however this model is flexible enough that testing events can be conducted in community centers, schools, hotels or even in more obscure locations such as parking lots or other locations where drive thru testing could occur.

As outlined below, OSHS would receive an event request to include the location and target number of individuals for testing, schedule and coordinate all event related activities, perform the event and collect data electronically and report results to individuals.

Exhibit 3: COVID-19 Testing Event Process Flow



OSHS can support up to 80 events at one time throughout the State of California. A team would consist of four members, one Event Oversight Administrator (EOA), one clinical staff member (i.e. NP, RN, LPN, Phlebotomist, MA), one non-clinical staff members and one security team member. As requested, some locations can include a medical interpreter. Each team would be able to complete, in a 12 hour day, 132 tests per site/day and could increase capacity if additional teams are added or requested at each site. OSHS Testing Events consist of three phases that need to be managed: pre-event, event, and post-event.

2.1 PRE-EVENT

Upon the State of California securing a testing location, a request can be submitted to OSHS via the Client Portal, email, or by telephone from a designated entity within the State of California, which has been deemed the County Point of Contact. Once the request is received, we immediately assign a Testing Event Coordinator who will manage the coordination details for the requested event. Our Testing Event Coordinators work with the State Event Point of Contact (POC) to ensure OSHS has all the information needed. Those details include:

- The event location—street address, building number, city, state, and ZIP Code

- Start and end dates of the event and start and end times for each event day
- Event POC and contact information including office and mobile phone numbers
- Confirmation of security, building maintenance, custodial services with the Event POC
- Confirmation of POC to send supplies and equipment to for set-up
- Identification and Registration of patients to receive services
- Site layout, electrical needs and internet connectivity
- Any other details required

Additionally, for those events in building, OSHS will be working with the State Event POC on how to limit how germs enter the facility; minimize chance of exposure/risk, implement movement controls and manage access and movement within the confines of the event location. To include:

- Lay-out and flow for the event to ensure 6-10 feet of social distancing for all patients as well as healthcare providers;
- Utilization of the entire building facility for completion of the medical and administrative portions of the event;
- Maintain social distancing and group requirements in accordance with the State, CDC and WHO guidelines; and
- Only allowing a set number of patients into the event areas at one time with the use of staging, sizing, staggering and focused movements throughout the event

Once the event is confirmed, Event Operations Center (EOC) Staffing Coordinators generate the order that details the required staff for each site, to include healthcare providers, administrative staff, medical interpreters (as needed) and security. Once the above event details are confirmed, an event can start within 72-96 hours.

Due to the fact that appropriate health officers will serve as referring licensed physicians, the EOC Staffing Coordinators will not communicate with the referring physician(s) with regards to identification and registration of patients for the events. OSHS will follow the State guidance at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Expanding-Access-to-Testing-Updated-Guidance-on-Prioritization-for-COVID-19-Testing.aspx> for eligibility criteria of attendees for testing events. In addition, OSHS will work with the point of contact within each County on groups of individuals to be tested in order to ensure that anyone that needs a test gets a test as indicated by the County. The EOC Staffing Coordinators are also responsible to ensure that the appropriate equipment and supplies are requested per the order. If necessary, our Travel Coordinators are responsible for arranging travel to ensure designated staff can get to their respective sites on time.

Scheduling. Once the event location, date and times are established, OSHS will work with the County on how best to reach out to eligible attendees, either via email, text or phone call advising they are able to schedule a time for receiving their test. The notification will direct the patient to create an account and log in to the OSHS secure patient portal, LHI.Care.

Once logged in, the patient will be presented with Testing Events in their area. After selecting a preferred testing location, the patient will choose a testing date and time. Available date and times are displayed based on open capacity. Capacity is predetermined for the event based on the staffing model and calculated daily throughput. Upon selection of the date and time, the patient will receive a confirmation of the scheduled testing appointment along with their unique Authorization Id to present at the test location.

The patient will also receive a testing appointment reminder prior to their scheduled test date, advising that they can see full appointment details in LHI.Care if necessary. For patients with no internet access they can contact our Medical Service Coordinators who will be able to confirm demographic and preferred contact method information as well as collect any insurance information. They will then register them for an event site as well as a date and time for an appointment.

At this time, it is assumed that all event attendees will have an appointment for their sample collection. If a patient does not have access to the internet, a toll free number will be offered to patients to allow them to contact OSHS who will complete the registration and appointment scheduling over the phone. At this time, "walk-in's" will not be allowed.

Specimen Collectors. OSHS maintains an experienced network of more than 29,000 health care professionals in all 50 U.S. states and territories, the District of Columbia, and Germany. This includes 400+ credentialed health care providers from California that we use primarily for mobile events in RHRP that can be utilized for specimen collection for this program. As an NCQA certified Credentials Verification Organization (CVO), OSHS has the experience, systems, and processes in place to ensure our providers meet the highest standards of quality.

Depending on the expected volume, we can expand these capabilities if necessary to meet increased demand. As a subsidiary of UnitedHealth Group, we can access additional networks of medical professionals and we can also work directly with the State of California to leverage local talent that could serve in either clinical or non-clinical roles.

Distribution Operations Center (DOC). From our work managing nearly 2,000 annual mobile group events for RHRP over the past 18 years, we have implemented world class logistics and shipping capabilities through our Distribution Operations Center (DOC). Our systems are integrated directly with FedEx web services, and our established relationship with FedEx provides us with their best available pricing (no other commercial or government entity receives better pricing from FedEx). We have negotiated pricing based on weight, not distance, eliminating the need for multiple warehouses and reducing shipping costs. As a major FedEx customer, we have a unique ZIP Code and warehouse at their Memphis hub, which allows for prioritized shipping over other customers. A single, centralized warehouse provides a secure, controlled environment, including certified cold-chain storage capabilities.

Our DOC will ensure any medical supplies, IT equipment, and administrative supplies (tents, tables, traffic cones, generators, signage etc.) are prepared, packaged, and shipped to the Testing Event sites.

Staff Training. Ahead of the event, all staff will be required to undergo training that will be conducted within an online training module. The training will include processes for collection/handling of specimens, rules for wearing PPE, donning and doffing PPE, and hand washing hygiene.

2.2 EVENT

The day prior to the event all set-up will be completed. The EOA will work with the State Event POC to further evaluate the accommodations and determine the event set-up to account for best event flow, privacy for providers, and sound-level monitoring. They will establish the best fit for the services being provided at the particular event and set up the tents, tables, chairs, privacy screens, signage, laptops, printers, and scanners depending on the type of event being offered.

During the event, our Event Oversight Administrator (EOA)/Leads at each site will ensure the administrative staff and HCPs perform all requested services required at each location. The EOA at each site will be the primary POC during the event. They will establish communication with the team, meet with them to address any concerns onsite, and manage the set-up process according to the event plan. The EOAs monitor the schedule, event flow, and timeliness of the services to ensure all requested testing is completed at the event. If any administrative or other issues arise regarding staffing, equipment malfunctions, training questions, or clinical questions, the EOA will be able to communicate with staff from the various OSHS supporting functions who are available on call 24x7 while events occur.

Each site will be configured to provide the maximum output of screenings while maintaining strict controls over protected health information (PHI), personally identifiable information (PII), infection control and patient and staff health and safety. Event attendees will be verified upon arrival to the testing location by administrative staff and then provide any additional PHI/PII necessary to complete the laboratory requisition for their specimen. Upon completion, the patient will proceed into the testing area where they will be greeted by event staff. Once the specimen is collected, the clinician will release the patient from the event, and then exit the testing location to store the collected specimen and replace their PPE based on encounter level. The clinician will then collect the next patient's specimen collection supplies and proceed to the testing location to greet them.

As part of our standard operating procedures, administrative staff and health care providers are instructed to use disposable wipes to routinely clean all frequently touched surfaces.

2.3 POST-EVENT

Daily, our EOAs manage specimen pick-up to the desired lab locations as depicted by the State of California, daily specimen completion numbers, the FedEx or other courier pick-up information, disinfecting, clean-up and daily staff departures. OSHS would recommend that the State Event POC coordinate for a deep cleaning of the site each evening. We will comply with all local, state, and Federal laws for disposing of medical waste and biohazardous materials. They will also manage communication with the State

of California and the OSHS Distribution Operations Center for additional supply requests as necessary.

Results Reporting: The data collected at the event is automatically uploaded and processed in MedNet to await the lab results. Upon receipt of the lab results, each patient will receive a notification via email, text or phone call advising them that their results are available. For all negative results, patients will be able to retrieve those results directly from LHI.Care if they opted into the email or text notifications. If they preferred a phone call, one of our Clinical Operations department team members will reach out with that testing notification.

For any positive results, a nurse in our Clinical Operations department and/or the reference laboratory will call the patient regarding the results and clinical care path as directed by the State of California. This information will then also be posted in LHI.Care for the patient to retrieve and review for discussion with their primary health care provider. All notifications will be made according to local, state, and federal guidelines and statutes.

Data Transmission: Additionally, all data collected and results received will be sent via data exchange to CalREDIE. Upon contract execution we will work with CalREDIE IT staff to establish interface as quickly as possible. Testing can start even before an interface is complete and data will be transmitted as soon as the interface passes testing from both our team and the CalREDIE team.

Our system, MedNet, allows flexibility in defining and implementing custom data schemes and formats such as extensible mark-up language (XML), HL7 EHR formats, flat file formats, Excel, and Access. It also provides various data exchange methodologies with configurable frequency and content to include bi-directional secure file-transfer protocol (FTP), secure web services, and web site data export. All data sent to CalREDIE will be provided in real time as updates are being confirmed in MedNet. This ensures that CalREDIE receives the most up-to-date information as quickly as possible. OSHS also provides secure access electronic documentation and reporting on an as needed basis through our Client Portal.

Claims Billing: Upon completion of the testing process, OSHS has the ability to bill patient's insurance carriers and/or provide this information directly to the State of California. OSHS will collect insurance information and bill the insurance directly for the cost of services.

Event Conclusion: Upon conclusion of the need for each testing site, our EOAs manage supplies and equipment packaging, removal and return, and facility/site restoration. The Distribution Center is responsible for managing post-event supplies processing; and our computer technicians are responsible for equipment re-inventory.

3.0 ALTERNATE DELIVERY MODEL – HYBRID STAFFING MODEL

The above event delivery model can be customized at each stage in order to support a collection site that is managed locally with resources from the State of California.

OSHS can also support a consulting arrangement site, whereby, we would complete all pre-event related activities as outlined above to include event coordination, local staffing arrangements with the State, scheduling, distribution and training. OSHS will be able to provide training to local staff that the State of California would use within this hybrid model.

Training will include, how the site will operate, use of technology on site as well as collection procedures that need to be followed. The training will be provided for both Administrative and Clinical roles.

In this model, OSHS would supply the Event Oversight Administrator who will be the primary POC during the event. They will establish communication with the local team, meet with them to address any concerns onsite, and manage the set-up process according to the event plan. The EOAs will be able to monitor the schedule, event flow, and timeliness of the services to ensure all requested testing is completed at the event. If any administrative or other issues arise regarding staffing, equipment malfunctions, training questions, or clinical questions, the EOA will be able to communicate with staff from the local health system or other local entity to resolve any issues onsite. The State of California would be fully and completely responsible for the acts and/or omissions of its own personnel (including the acts and/or omissions of any third party contractors and subcontractors and their employees) providing the services contemplated by this hybrid model. OSHS would assume no risk or liability for any work performed by non-OSHS staff, or any bodily injury or illness of any non-OSHS staff.

Dependent upon need, OSHS can manage the post event operations or turn those over to be managed locally.

4.0 TRANSITION

OSHS would advocate that while a service contract is being executed that implementation and process discussions are occurring in tandem in order to finalize all requirements to maximize go live time. Once all requirements as well as the contract is finalized, OSHS will be able to deliver services in the specified locations by the State of California starting on May 4, 2020.

5.0 QUALITY ASSURANCE

OSHS maintains International Organization for Standardization (ISO) 9001:2015 certification to ensure best business practices for quality assurance. To achieve the highest quality at all levels of the programs, OSHS places the utmost importance on meeting customer expectations and meeting required acceptable performance levels. We integrate quality throughout the program to most effectively achieve desired results. OSHS's quality control and quality assurance procedures ensure continuous management of, and compliance with, customer performance requirements.

Our Continuous Improvement Management System (CIMS) applies to all regulatory standards referenced within contractual standards and to all processes for the delivery of services as defined by OSHS's customers. To ensure processes are effective, standardized documents will continue to outline the criteria and methods used by employees. The sequence and interaction of major processes in the CIMS are further defined in documentation. The CIMS processes will support the approved Quality Policy and objectives, which are implemented, reviewed, and maintained to regulate the effectiveness of the CIMS.

EXHIBIT B, PAYMENT PROVISIONS

- A. Payment will be made in accordance with, and within the time specified in Government Code Chapter 4.5, commencing with Section 927.
- B. Rates are set forth in the tables below.

Number of locations is an estimate. The actual number of locations requested by the State may be more or less than 80, but will be at the 1-Station or 2-Station rates identified below.

California COVID-19 Testing In-Facility Option					
Locations	80		Locations	80	
Workdays/Month	20		Workdays/Month	20	
Maximum Tests per day (1 team)	132		Maximum Tests per day (1 team)	264	
Total Tests / Month	211,200		Total Tests / Month	422,400	
Cost per Kit & Lab Test	\$59.60	Pass-through cost	Cost per Kit & Lab Test	\$59.60	Pass-through cost
Location: In-Facility (1 Station)			Location: In-Facility (2 Station)		
Total Cost (1 team/location)	\$3,700		Total Cost (2 teams/location)	\$7,100	
One-time Costs (per location)	\$764	Pass-through cost	One-time Costs (per location)	\$1,528	Pass-through cost
ODC, PPE, Shipping (per day)	\$195	Pass-through cost	ODC, PPE, Shipping (per day)	\$390	Pass-through cost
Technology Access Fee / Test	\$1.00		Technology Access Fee / Test	\$1.00	
Add-on items			Add-on items		
Security Guard (per team)	\$936		Security Guard (per team)	\$1,872	
Interpreter @ 30% of locations (per team)	\$210	30% of locations	Interpreter @ 30% of locations (per team)	\$420	30% of locations
Program Management (per day)	\$92		Program Management (per day)	\$92	
Call-center for non-internet patient handling (per day)	\$625		Call-center for non-internet patient handling (per day)	\$1,250	
Signage (one-time per location)	\$531	Pass-through cost	Signage (one-time per location)	\$531	Pass-through cost
MONTHLY SUMMARY			MONTHLY SUMMARY		
Total Team Costs/Month	\$5,981,135		Total Team Costs/Month	\$11,482,270	
Total ODC, PPE, Shipping/Month	\$311,607	Pass-through cost	Total ODC, PPE, Shipping/Month	\$623,213	Pass-through cost
Total Cost per Kit & Lab Test	\$12,587,015	Pass-through cost	Total Cost per Kit & Lab Test	\$25,174,030	Pass-through cost
Total Technology Access Fee	\$211,200		Total Technology Access Fee	\$422,400	
Total Cost / Month	\$19,090,957		Total Cost / Month	\$37,701,913	
Total Cost / Test	\$90.39		Total Cost / Test	\$89.26	
SUMMARY: Add-on items			SUMMARY: Add-on items		
Security Guard (per team)	\$1,497,600		Security Guard (per team)	\$2,995,200	
Interpreter @ 30% of locations (per team)	\$336,000		Interpreter @ 30% of locations (per team)	\$672,000	
Program Management (per day)	\$146,486		Program Management (per day)	\$146,486	
Call-center for non-internet patient handling (per day)	\$1,000,006		Call-center for non-internet patient handling (per day)	\$2,000,012	
Signage (one-time per location)	\$42,456	Pass-through cost	Signage (one-time per location)	\$42,456	Pass-through cost
Total Cost / Month	\$22,113,505		Total Cost / Month	\$43,558,067	
Total Cost / Test	\$104.70		Total Cost / Test	\$103.12	

Assumptions included within this Pricing Proposal

- Testing performed statewide @ 80 locations (# of locations may vary +/-)
 - Testing performed 20 days per month
 - A maximum of 132 tests performed within a 12-hour day, 1 station; 264 for 2 stations
 - Facilities within which to conduct the testing are provided by the State
 - ODC, PPE, Shipping are pass through costs without mark-up
 - Lab Kits & Testing is via Quest and is pass through cost as of 4/15/2020 (without mark-up). Lab Kits and Testing pass through cost includes insurance claims processing through a 3rd party.
 - A Spanish speaking medical interpreter is included @ 30% of the locations
 - One Security personnel will be provided per team by the Contractor. Contractor shall also provide the Staffing, supplies & PPE to perform test collections. "Staffing" as defined herein shall have administrative and clinical background, preferably with Registered Nurse (RN) degree but can also be Licensed Practical Nurses (LPN) Medical Assistants (MA), Phlebotomists or Nurse Practitioners.
 - Any in-state travel for support in rural areas would be cost reimbursable, if necessary.
- C. It is mutually agreed that if the State 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 the Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any provisions of this Agreement.
- D. Invoices: Contractor shall submit itemized invoices to the State contact person in the designated manner via electronic and/or mail delivery. Invoices shall include the following:
- a) State Agency Name
 - b) Contract Number
 - c) Order Number
 - d) Billing Code
 - e) Description of services and quantities
 - f) Event location, date and times
 - g) Pricing option/information
 - h) Pass through costs (pre-approved), as applicable, plus general and administrative expenses, are without mark-up
- E. The State contact person will verify and approve, or disapprove, the invoiced items. If the State does not approve the invoiced items, the invoice will be

disputed and returned to the Contractor for correction. The Contractor shall work with the State to provide a billing system that meets the State's needs.

- F. Pass through costs (if any, such as 3rd-party tests/service/shipping vendors, materials, etc.) if permitted in the Agreement must be pre-approved by the State and billed without mark-up.
- G. Payment for services performed under this Agreement will be made upon satisfactory completion of services rendered. The Contractor shall invoice the State in arrears upon successful completion of services. Pursuant to the Prompt Payment Act, the State shall pay undisputed, properly submitted invoices within 45 calendar days of initial receipt.

GTC 04/2017

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 third party claims and losses accruing or resulting from any negligent or wrongful act, error or omission of Contractor in connection with Contractor's 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's negligent or wrongful act, error or omission in the performance of this Agreement. Notwithstanding the foregoing, Contractor will have no obligation under this Section 5 or otherwise if the claim or loss results from the State's failure to perform its obligations under this Agreement. To the extent that Contractor is only partially responsible for a third party's claims or losses, Contractor's obligation to indemnify, defend and hold harmless the State shall be reduced to the extent of Contractor's responsibility.
6. **LIMITATION OF LIABILITY**: EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL DAMAGES OR SIMILAR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY SOW HEREUNDER, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE).

7. DISCLAIMER OF WARRANTY. THE PARTIES ACKNOWLEDGE THAT THE COVID-19 TEST KITS TO BE USED IN CONNECTION WITH THIS AGREEMENT ARE FOR SCREENING PURPOSES ONLY AND MAY NOT IN ALL CASES PROVIDE A DEFINITIVE RESULT. AS WITH ALL SCREENING TESTS, IN A CERTAIN NUMBER OF CASES THERE CAN BE INCIDENCES OF FALSE-POSITIVE AND FALSE-NEGATIVE RESULTS. THE PARTIES FURTHER ACKNOWLEDGE THAT THE COVID-19 TEST KITS PROVIDED UNDER THIS AGREEMENT MAY NOT BE EFFECTIVE FOR ANY MUTATIONS OF COVID-19.

EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7 AND TO THE EXTENT PROHIBITED BY APPLICABLE LAW, THE SERVICES AND PRODUCTS PROVIDED BY CONTRACTOR UNDER THIS AGREEMENT ARE PROVIDED STRICTLY “AS-IS,” “AS-AVAILABLE,” AND “WITH ALL FAULTS,” AND CONTRACTOR MAKES NO ADDITIONAL WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY AS TO THE SERVICES, PRODUCTS, OR ANY OTHER MATTER WHATSOEVER. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS OF ANY KIND, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USE, OR A PARTICULAR OR BUSINESS RESULT, TITLE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW, CONTRACTOR MAKES NO WARRANTY THAT THE PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT WILL: (I) MEET THE STATE’S REQUIREMENTS OR INTENDED PURPOSES OR USES; (II) PREVENT THE SPREAD OR INCURRENCE OF ANY ILLNESS, VIRUS, OR BACTERIA; (III) BE FREE FROM DEFECTS, WHETHER PATENT OR LATENT, IN DESIGN, MATERIALS OR WORKMANSHIP.

7. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.

8. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any future payments as a result of Contractor’s material breach of the Agreement upon providing 10 calendar days written notice to Contractor; provided however, that such written notice will contain a reasonable description of the reason(s) for termination and Contractor will have the right to cure such default within such notice period, unless the State agrees in writing to a longer cure period. In the event of termination for cause, 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.

9. 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.

10. 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).

11. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. 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. (See Cal. Code Regs., tit. 2, §11105.)

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

12. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

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

12. 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.

13. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California. References to any statute, rule, or regulation are to the statute, rule, executive order or regulation as amended, modified, supplemented, or replaced from time to time (and, in the case of statutes, include any rules and regulations promulgated under said statutes); provided, however, that, for purposes of any representations and warranties contained in this Agreement that are made as of a specific date or dates, references to any statute, rule, executive order or regulation shall be deemed to refer to such statute, rule, executive order or regulation as of such date.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.)

19. 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).)

20. FORCE MAJEURE:

Contractor shall not be in breach of this Agreement nor liable for delay in performing or failure to perform any of its obligations under this Agreement if such delay or failure results from events, circumstances, or causes beyond Contractor's reasonable control, including but not limited to: pandemic; epidemic; any global, national, or local public health emergency or disease outbreak (including, without limitation, COVID-19 (a/k/a the 2019 Novel Coronavirus) or any similar disease(s)); strike, lock-out or other industrial dispute; failure of a utility service or transport or telecommunications network; act of God; fires, floods, storms, earthquakes and explosions; war, riot, or other civil disturbance; malicious damage; compliance with any law or governmental order, rule, regulation, direction or act of any government in its sovereign capacity including quarantine and travel and shipping restrictions; default by suppliers, vendors, or sub-contractors; or difficulties in obtaining necessary labor, materials, manufacturing facilities, or transportation, regardless of (i) whether or not any of the foregoing were reasonably foreseeable or (ii) Contractor's performance becoming impossible or impractical such that this Section 20 will take effect in either scenario (each, a "Force Majeure Event"). Upon the occurrence of any event of Force Majeure, Contractor shall notify the State in writing of such event as soon as reasonably practicable but no later than five (5) Business Days following Contractor's attainment of actual knowledge that the event of Force Majeure will result in Contractor's non-fulfillment of its obligations hereunder and shall specify in reasonable detail the facts constituting such event of Force Majeure.

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HIPAA Business Associate Addendum

I. Recitals

- A. The underlying contract (Agreement), to which this HIPAA Business Associate Addendum is attached to and made a part of, has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), 42 U.S.C. section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations").
- B. The Department of Public Health ("CDPH") wishes to disclose to Business Associate certain information pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI"), including protected health information in electronic media ("ePHI"), under federal law, and personal information ("PI") under state law.
- C. As set forth in the Agreement, Contractor, here and after, is the Business Associate of CDPH acting on CDPH' behalf and 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 and PI. CDPH and Business Associate are each a party to the Agreement and are collectively referred to as the "parties."
- D. The purpose of this Addendum is to protect the privacy and security of the PHI and PI that may be created, received, maintained, transmitted, used or disclosed pursuant to the Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act and the HIPAA regulations, including, but not limited to, the requirement that CDPH must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act.
- E. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

II. Definitions

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- C. Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- D. Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C Section 17921 and implementing regulations.
- E. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.
- F. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or

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condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR section 160.103.

- G. Privacy Rule shall mean the HIPAA Regulation that is found at 45 CFR Parts 160 and 164.
- H. Personal Information shall have the meaning given to such term in California Civil Code sectionS 1798.3 and 1798.29..
- I. Protected Health Information means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR section 160.103.
- J. Required by law, as set forth under 45 CFR section 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- K. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- L. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, 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.
- M. Security Rule shall mean the HIPAA regulation that is found at 45 CFR Parts 160 and 164.
- N. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. section 17932(h), any guidance issued pursuant to such Act and the HIPAA regulations.

III. Terms of Agreement

A. Permitted Uses and Disclosures of PHI by Business Associate

Permitted Uses and Disclosures. Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in the Agreement, for, or on behalf of CDPH, provided that such use or disclosure would not violate the HIPAA regulations, if done by CDPH. Any such use or disclosure must, to the extent practicable, be limited to the limited data set, as defined in 45 CFR section 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, and the HIPAA regulations.

1. ***Specific Use and Disclosure Provisions.*** Except as otherwise indicated in this Addendum, Business Associate may:

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- a. ***Use and disclose for management and administration.*** Use and disclose PHI for the proper management and administration of the Business Associate provided that such 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.
- b. ***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.

B. Prohibited Uses and Disclosures

1. Business Associate shall not disclose PHI about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. section 17935(a) and 45 CFR section 164.522(a).
2. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CDPH and as permitted by 42 U.S.C. section 17935(d)(2).

C. Responsibilities of Business Associate

Business Associate agrees:

1. ***Nondisclosure.*** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by the Agreement or as required by law.
2. ***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, in compliance with 45 CFR sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of PHI other than as provided for by the Agreement. Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR section 164, subpart C, in compliance with 45 CFR section 164.316. 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 3, Security, below. Business Associate will provide CDPH with its current and updated policies.
3. ***Security.*** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
 - a. Complying with all of the data system security precautions listed in Attachment A, the Business Associate Data Security Requirements;

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- b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of CDPH under the Agreement;
- c. 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
- d. 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 PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of the Agreement.
- e. Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with CDPH.

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 Addendum.

E. *Business Associate's Agents and Subcontractors.*

- 1. To enter into written agreements with any agents, including subcontractors and vendors, to whom Business Associate provides PHI or PI received from or created or received by Business Associate on behalf of CDPH, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Business Associate with respect to such PHI and PI under this Addendum, and that comply with all applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations.
- 2. In accordance with 45 CFR section 164.504(e)(1)(ii), upon Business Associate's knowledge of a material breach or violation by its subcontractor of the agreement between Business Associate and the subcontractor, Business Associate shall:
 - a. Provide an opportunity for the subcontractor to cure the breach or end the violation and terminate the agreement if the subcontractor does not cure the breach or end the violation within the time specified by CDPH; or
 - b. Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.

F. *Availability of Information to CDPH and Individuals.* To provide access and information:

- 1. 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 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

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transmitted by CDPH within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.

2. If Business Associate maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Business Associate shall provide such information in an electronic format to enable CDPH to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e).
3. If Business Associate receives data from CDPH that was provided to CDPH by the Social Security Administration, upon request by CDPH, Business Associate shall provide CDPH with a list of all employees, contractors and agents who have access to the Social Security data, including employees, contractors and agents of its subcontractors and agents.

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. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Business Associate, Business Associate shall so certify to CDPH and shall set forth the efforts it made to obtain the information.

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 the HITECH Act and its implementing regulations, including but not limited to 45 CFR section 164.528 and 42 U.S.C. section 17935(c). If Business Associate maintains electronic health records for CDPH as of January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after January 1, 2014. If Business Associate acquires electronic health records for CDPH after January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.

J. *Breaches and Security Incidents.* During the term of the Agreement, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:

1. ***Notice to CDPH.*** (1) To notify CDPH **immediately by telephone call plus email or fax** upon the discovery of a breach of unsecured PHI or PI in electronic media or in any other media if the PHI or PI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to CDPH by the Social Security Administration. (2) To notify CDPH **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI in violation of the Agreement and this Addendum, or potential loss of confidential data affecting the Agreement. A breach shall be treated as discovered by Business Associate as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any

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person (other than the person committing the breach) who is an employee, officer or other agent of Business Associate.

Notice shall be provided to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the CDPH ITSD Service Desk. Notice shall be made using the "CDPH Privacy Incident Report" form, including all information known at the time. Business Associate shall use the most current version of this form, which is posted on the CDPH Privacy Office website (www.CDPH.ca.gov).

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI, Business Associate shall take:

- a. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
 - b. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
2. **Investigation and Investigation Report.** To immediately investigate such security incident, breach, or unauthorized access, use or disclosure of PHI or PI. Within 72 hours of the discovery, Business Associate shall submit an updated "CDPH Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Information Security Officer:
 3. **Complete Report.** To provide a complete report of the investigation to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "CDPH Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If CDPH requests information in addition to that listed on the "CDPH Privacy Incident Report" form, Business Associate shall make reasonable efforts to provide CDPH with such information. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "CDPH Privacy Incident Report" form. CDPH will review and approve the determination of whether a breach occurred and individual notifications are required, and the corrective action plan.
 4. **Notification of Individuals.** If the cause of a breach of PHI or PI is attributable to Business Associate or its subcontractors, agents or vendors, Business Associate shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days. The CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Information Security Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.

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HIPAA Business Associate Addendum

5. **Responsibility for Reporting of Breaches.** If the cause of a breach of PHI or PI is attributable to Business Associate or its agents, subcontractors or vendors, Business Associate is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured PHI involves more than 500 residents of the State of California or its jurisdiction, Business Associate shall notify the Secretary of the breach immediately upon discovery of the breach. If Business Associate has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to CDPH in addition to Business Associate, Business Associate shall notify CDPH, and CDPH and Business Associate may take appropriate action to prevent duplicate reporting. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 1, above.
6. **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 Addendum or the Agreement to which it is incorporated.

CDPH Program Contract Manager	CDPH Privacy Officer	CDPH 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 1415 L Street, 5 th Floor Sacramento, CA 95814 Email: privacy@cdph.ca.gov Telephone: (877) 421-9634	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

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- K. *Termination of Agreement.*** In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Business Associate knows of a material breach or violation by CDPH of this Addendum, it shall take the following steps:
1. Provide an opportunity for CDPH to cure the breach or end the violation and terminate the Agreement if CDPH does not cure the breach or end the violation within the time specified by Business Associate; or
 2. Immediately terminate the Agreement if CDPH has breached a material term of the Addendum and cure is not possible.
- L. *Due Diligence.*** Business Associate shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Addendum and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Addendum.
- M. *Sanctions and/or Penalties.*** Business Associate understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Business Associate may result in the imposition of sanctions and/or penalties on Business Associate under HIPAA, the HITECH Act and the HIPAA regulations.

IV. Obligations of CDPH

CDPH agrees to:

- A. *Notice of Privacy Practices.*** Provide Business Associate with the Notice of Privacy Practices that CDPH produces in accordance with 45 CFR section 164.520, as well as any changes to such notice.
- 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 section 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

- A.** From time to time, CDPH may inspect the facilities, systems, books and records of Business Associate to monitor compliance with the Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the CDPH Privacy 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 Addendum, nor does CDPH's:

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1. Failure to detect or
 2. 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' enforcement rights under the Agreement and this Addendum.
- B.** If Business Associate is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Addendum, Business Associate shall notify CDPH and provide CDPH with a copy of any PHI or PI that Business Associate provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI or PI to the Secretary. Business Associate is responsible for any civil penalties assessed due to an audit or investigation of Business Associate, in accordance with 42 U.S.C. section 17934(c).

VI. Termination

- A. *Term.*** The Term of this Addendum shall commence as of the effective date of this Addendum and shall extend beyond the termination of the Agreement and shall terminate when all the PHI provided by CDPH to Business Associate, or created or received by Business Associate on behalf of CDPH, is destroyed or returned to CDPH, in accordance with 45 CFR 164.504(e)(2)(ii)(I).
- B. *Termination for Cause.*** In accordance with 45 CFR section 164.504(e)(1)(ii), upon CDPH' knowledge of a material breach or violation of this Addendum by Business Associate, CDPH shall:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Agreement if Business Associate does not cure the breach or end the violation within the time specified by CDPH; or
 2. Immediately terminate the Agreement if Business Associate has breached a material term of this Addendum and cure is not possible.
- C. *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 the Agreement if Business Associate is found guilty of a criminal violation of HIPAA. CDPH may terminate the 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.
- D. *Effect of Termination.*** Upon termination or expiration of the Agreement for any reason, Business Associate shall 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. If return or destruction is not feasible, Business Associate shall notify CDPH of the conditions that make the return or destruction infeasible, and CDPH and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. Business Associate shall continue to extend the protections of this Addendum to such PHI, 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 Addendum, 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

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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 Addendum 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 HITECH Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon CDPH' request, Business Associate agrees to promptly enter into negotiations with CDPH concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. CDPH may terminate the Agreement upon thirty (30) days written notice in the event:
1. Business Associate does not promptly enter into negotiations to amend this Addendum when requested by CDPH pursuant to this Section; or
 2. Business Associate does not enter into an amendment providing assurances regarding the safeguarding 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 the 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 Addendum 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 Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations.
- F. Regulatory References.** A reference in the terms and conditions of this Addendum 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 VI.D of this Addendum shall survive the termination or expiration of the 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.

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Attachment A
Business Associate Data Security Requirements

I. Personnel Controls

- A. *Employee Training.*** All workforce members who assist in the performance of functions or activities on behalf of CDPH, or access or disclose CDPH PHI or PI must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination.
- B. *Employee Discipline.*** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- C. *Confidentiality Statement.*** All persons that will be working with CDPH PHI or PI must sign a confidentiality statement that includes, 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 or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for CDPH inspection for a period of six (6) years following contract termination.
- D. *Background Check.*** Before a member of the workforce may access CDPH PHI or PI, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

II. Technical Security Controls

- A. *Workstation/Laptop encryption.*** All workstations and laptops that process and/or store CDPH PHI or PI must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the CDPH Information Security Office.
- B. *Server Security.*** Servers containing unencrypted CDPH PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- C. *Minimum Necessary.*** Only the minimum necessary amount of CDPH PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- D. *Removable media devices.*** All electronic files that contain CDPH PHI or PI 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.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- E. *Antivirus software.*** All workstations, laptops and other systems that process and/or store CDPH PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.

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- F. Patch Management.** All workstations, laptops and other systems that process and/or store CDPH PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- G. User IDs and Password Controls.** All users must be issued a unique user name for accessing CDPH PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords 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)
- H. Data Destruction.** When no longer needed, all CDPH PHI or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the CDPH Information Security Office.
- I. System Timeout.** The system providing access to CDPH PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- J. Warning Banners.** All systems providing access to CDPH PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- K. 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 PI, or which alters CDPH PHI or PI. 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 or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- L. Access Controls.** The system providing access to CDPH PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.

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- M. *Transmission encryption.*** All data transmissions of CDPH PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI or PI in motion such as website access, file transfer, and E-Mail.
- N. *Intrusion Detection.*** All systems involved in accessing, holding, transporting, and protecting CDPH PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

III. Audit Controls

- A. *System Security Review.*** All systems processing and/or storing CDPH PHI or PI 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 should include vulnerability scanning tools.
- B. *Log Reviews.*** All systems processing and/or storing CDPH PHI or PI 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 or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

IV. Business Continuity / Disaster Recovery Controls

- A. *Emergency Mode Operation Plan.*** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic CDPH PHI or PI 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 the Agreement for more than 24 hours.
- B. *Data Backup Plan.*** Contractor must have established documented procedures to backup CDPH PHI to maintain retrievable exact copies of CDPH PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore CDPH PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of CDPH data.

V. Paper Document Controls

- A. *Supervision of Data.*** CDPH PHI or PI 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 or PI 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 or PI is contained shall be escorted and CDPH PHI or PI shall be kept out of sight while visitors are in the area.
- C. *Confidential Destruction.*** CDPH PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.

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- D. *Removal of Data.*** CDPH PHI or PI must not be removed from the premises of the Contractor except with express written permission of CDPH.
- E. *Faxing.*** Faxes containing CDPH PHI or PI 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 the fax.
- F. *Mailing.*** Mailings of CDPH PHI or PI shall be sealed and secured from damage or inappropriate viewing of PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of CDPH PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of CDPH to use another method is obtained.

EXHIBIT D

SPECIAL PROVISIONS

A. INSURANCE TERMS AND CONDITIONS

Insurance Requirements – Contractor shall comply with all requirements outlined in the (1) General Provisions Applying to All Policies section and (2) Contract Insurance Requirements outlined in this section. No payments will be made under this Agreement until Contractor fully complies with all requirements.

1. **General Provisions Applying to All Policies**

- a. **Coverage Term** – Coverage needs to be in force for the complete term of the Agreement. If insurance expires during the term of the Agreement, a new certificate must be received by the State at least thirty (30) days prior to the expiration of this insurance. Any new insurance must comply with the original contract terms of the Agreement.
- b. **Policy Cancellation or Termination & Notice of Non-Renewal** – Contractor is responsible to notify the State within five (5) business days of any cancellation, non-renewal or material change that affects required insurance coverage. New certificates of insurance are subject to the approval of the Department of General Services and the Contractor agrees no work or services will be performed prior to obtaining such approval. In the event Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
- c. **Premiums, Assessments and Deductibles** – Contractor is responsible for any premiums, policy assessments, deductibles or self-insured retentions contained within their insurance program.
- d. **Primary Clause** – Any required insurance contained in this Agreement shall be primary, and not excess or contributory, to any other insurance carried by the State.
- e. **Insurance Carrier Required Rating** – All insurance companies must carry an AM Best rating of at least “A–” with a financial category rating of no lower than VII. If the Contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.
- f. **Endorsements** – Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.

- g. Inadequate Insurance – Inadequate or lack of insurance does not negate the Contractor's obligations under the Agreement.
 - h. Available Coverages/Limits – All coverage and limits available to the Contractor shall also be available and applicable to the State.
 - i. Satisfying an SIR - All insurance required by this Agreement must allow the State to pay and/or act as the Contractor's agent in satisfying any self-insured retention (SIR). The choice to pay and/or act as the Contractor's agent in satisfying any SIR is at the State's discretion.
 - j. Use of Subcontractors - In the case of Contractor's utilization of subcontractors to complete the contracted scope of work, Contractor shall include all subcontractors as insured's under Contractor's insurance or supply evidence of subcontractor's insurance to the State equal to policies, coverages, and limits required of Contractor.
2. Contract Insurance Requirements
Contractor shall display evidence of the following on a certificate of insurance evidencing the following coverages:
- a. **Commercial General Liability** – Contractor shall maintain general liability on an occurrence form with limits not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined with a \$2,000,000 annual policy aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability.
 - b. **Automobile Liability** – Contractor shall maintain business automobile liability insurance for limits not less than \$1,000,000 combined single limit. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. Should the scope of the Agreement involve transportation of hazardous materials, evidence of an MCS-90 endorsement or pollution during transportation is required whichever is applicable.
 - c. **Workers Compensation and Employers Liability** – Contractor shall maintain statutory worker's compensation and employer's liability

coverage for all its employees who will be engaged in the performance of the Agreement. In addition, employer's liability limits of \$1,000,000 are required. By signing this Agreement, Contractor acknowledges compliance with these regulations.

d. **Pollution Liability**

Contractor shall maintain Pollution Liability covering the Contractor's liability for bodily injury, property damage, and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Limits of not less than \$1,000,000 per incident and an annual aggregate amount of \$2,000,000 shall be provided.

e. **Errors and Omissions/Professional Liability-** Contractor shall maintain Errors and Omissions/Profession liability with limits of not less than \$1,000,000 each incident and \$3,000,000 aggregate covering damages caused by negligent, acts or omissions.

1. If Policy is written on a claims-made basis provide the following:

a. The Retroactive Date must be shown, and must be before the date of the Agreement or the beginning of contract work.

b. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the Agreement of work.

c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement's effective date, the Contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.

f. **Health Insurance Portability and Accountability Act (HIPAA) Standards for Privacy Of Individually Identifiable Health Information**

Contractor shall comply with the Health Insurance Portability and Accountability Act (HIPAA), as well as the HIPAA Business Associate Agreement attached herein as Exhibit D, Attachment 1, and the State and Federal requirements for privacy protection. The definitions and obligations required by the HIPAA Standards for Privacy of Individually Identified Health Information (U.S.C. 1320d et seq.), and implementing regulations including but not limited to 45 Code of Federal Regulations parts 142, 160, 162, and 164, hereinafter referred to as the Privacy Rule,

remain enforce and applicable for access to protected health information, including electronic protected health information.

B. AGENCY LIABILITY

The Contractor warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

C. SUBCONTRACTORS

Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontractor shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of the subcontractors as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

Contractor must ensure that the subcontractor(s) will have all necessary licenses, permits, and/or certifications to accomplish its portion of the work. Failure of a subcontractor(s) to have the proper licenses, permits, and/or certifications, may be cause for rejection of the subcontractor and/or termination of the Agreement. Should the subcontractor(s) change during the term of the Agreement, the State may require a Bidder Declaration form. Use of any subcontractor is subject to pre-approval by the State.

D. CONFIDENTIALITY OF DATA

All financial, statistical, personal, technical and other data and information relating to the State's operation, which are designated confidential by the State and made available to the Contractor in order to carry out this Agreement, or which become available to the Contractor in carrying out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information, as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure, shall be provided by the State in writing to the

Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required, under the provisions of this paragraph, to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this Agreement or is rightfully obtained from third parties.

D. RESOLUTION OF CONTRACT DISPUTES

Any dispute concerning a question of fact arising under the terms of this Agreement, which is not disposed of within a reasonable period of time by the Contractor and State employees normally responsible for the administration of this Contract, shall be brought to the attention of the State's director or designee.

E. LAWS TO BE OBSERVED

The Contractor shall keep fully informed of all existing and future state and federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Contractor shall at all times observe and comply with, and shall cause all agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the work. The Contractor shall protect and indemnify the State of California and all officers and employees thereof connected with the work against any claim, injury, or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor, a Subcontractor(s), or an employee(s). If any discrepancy or inconsistency is discovered in the Agreement for the work in relation to any such law, ordinance, regulation, order, or decree, the Contractor shall immediately report the same to the State Contract Administrator in writing.

E. SPECIFIC STATUTORY REFERENCE

Any reference to certain statutes in this Agreement shall not relieve the Contractor from the responsibility of complying with all other statutes applicable to the service furnished thereunder.

F. EMPLOYMENT OF UNDOCUMENTED WORKERS

By signing this Agreement, the Contractor swears or affirms that it has not, in the preceding five years, been convicted of violating a State or Federal law relative to the employment of undocumented workers.

G. CONTRACTS FUNDED BY THE FEDERAL GOVERNMENT

1. 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 Contract were executed after that determination was made.
2. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the current and/or subsequent years covered by this Agreement for the purposes of this program. 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.
3. 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.
4. The State has the option to void the Agreement under the 30-day cancellation clause or amend the Agreement to reflect any reduction of funds.
5. The recipient shall comply with the Single Audit Act and the reporting requirements set forth in OMB Circular, A-133.

H. FEDERAL DEBARMENT

The Federal Department of Labor requires that State agencies which are expending Federal funds of \$25,000 or more, have in the contract file, a certification by the Contractor that it has not been debarred or suspended from doing business with the Federal Government. Each Contractor must provide this documentation upon request.

I. SEVERABILITY

If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid

provision, which most closely approximates the intent and economic effect of the invalid provision. Headings are used for convenience of reference only and in no way define, limit, construe or describe the scope or extent of any section, or in any way affect this Agreement.

J. FAIR WAGE

Contractor warrants that all Contractor employees performing work under this Agreement are paid no less than the minimum Trainee Wage set by the Employment Training Panel for the county in which the work is performed, or the applicable federal, state, or local minimum wage, whichever is greater. Healthcare benefits valued at up to \$2.50 per hour can be used to meet this wage requirement.

K. FRINGE BENEFITS

Contractor shall make fringe benefit contributions on behalf of each Contractor employee performing work under this Agreement that are no less than the fringe benefit contributions required by the most recent Service Contract Act area-wide wage determination issued by the United States Secretary of Labor for the locality in which the work is performed.

L. NO MISCLASSIFICATION

Contractor warrants that individuals performing work under the Agreement will not be misclassified as independent contractors.

M. PAID SICK LEAVE

Contractor warrants that it will comply with all applicable federal, state, and local laws pertaining to paid sick leave, including any anti-retaliation provisions contained in such laws.

N. WORKPLACE SAFETY AND HEALTH

Contractor warrants that it will comply with all applicable safety and health requirements, including the Aerosol Transmissible Diseases Standard, 8 CCR § 5199, and applicable Cal/OSHA guidance. Contractor further warrants that it will comply with Labor Code sections 6310 and 6311 pertaining to protection of employees who file complaints or refuse to work in the face of hazardous conditions.

O. LABOR PEACE

To protect the State's proprietary and economic interests, as well as the public interest, in providing lodging for COVID-19 response efforts without interruption due to the economic effects of a labor dispute, Contractor shall enter into a labor peace agreement with any organization of any kind in which employees participate and which exists for

the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and which requests a labor peace agreement. The labor peace agreement shall include a binding and enforceable provision(s) prohibiting the organization and its members from engaging in the picketing, work stoppages, boycotts, or any other economic interference for the duration of the labor peace agreement, which must include the entire term of this Agreement. Nothing in this paragraph shall be construed as requiring Contractor to change terms and conditions of employment for its employees, recognize a labor organization as the bargaining representative for its employees, adopt any particular recognition process, or enter into a collective bargaining agreement with a labor organization.

P. PRIORITY FOR UNEMPLOYED WORKERS

When hiring any new employees to perform work under the Agreement, Contractor shall give any preference to any applicant who is currently unemployed, who is otherwise qualified.

EXHIBIT E

ADDITIONAL LEGAL TERMS REQUIRED FOR FEMA REIMBURSEMENT

A. Early Termination

1. Termination for Cause language is already incorporated in Exhibit C, #7. In addition to any other provision of this Agreement, the State may terminate this Agreement or cancel a portion of the services for any reason with fifteen (15) days' written notice.

B. Remedies

1. In the event of a breach by the Contractor of any term or provision of this Agreement, the State shall have the right to pursue all available remedies at law or equity, including recovery of damages and specific performance of this Agreement. The parties hereto agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate. Except as expressly provided elsewhere in this Agreement, each party's rights and remedies under this Agreement are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to that party.

C. Compliance with the Contract Work Hours and Safety Standards Act (where applicable)

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph C.1 of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph C.1 of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard

workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph C.1 of this section.

3. Withholding for unpaid wages and liquidated damages. The Office of Emergency Services shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph C.2 of this section.

4. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph C.1 through C.4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs C.1 through C.4 of this section.

D. Clean Air Act

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.

2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the California Governor's Office of Emergency Services, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

E. Federal Water Pollution Control Act

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Sections 1251 et seq.

2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

F. Debarment and Suspension Clause

1. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

2. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3. This certification is a material representation of fact relied upon by the State. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

G. Byrd Anti- Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

1. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the state.

APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

A. 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 awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. 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, 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, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) 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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

CONTRACTOR

By _____
Date _____

H. Procurement of Recovered Materials

1. In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;

- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

2. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

I. Access to Records

1. The following access to records requirements apply to this Agreement:

- i. The Contractor agrees to provide the state, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- ii. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- iii. The Contractor agrees to provide the FEMA Administrator or his or her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- iv. In compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

J. Department of Homeland Security Seal, Logo, Flags

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

K. Compliance with Federal Law, Regulations, and Executive Orders

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

L. No Obligation by Federal Government

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party

pertaining to any matter resulting from the Agreement.

M. Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.