

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

	AGREEMENT NUMBER <b>21-10630</b>	PURCHASING AUTHORITY NUMBER (If Applicable)
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1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

## CONTRACTING AGENCY NAME

California Department of Public Health

## CONTRACTOR NAME

Color Health, Inc.

2. The term of this Agreement is:

## START DATE

9/9/2021

## THROUGH END DATE

12/6/2021

3. The maximum amount of this Agreement is:

\$2,000,000.00

Two Million Dollars and Zero Cents

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	Scope of Work	2
	Attachment 1	3
Exhibit B	Budget Detail & Provisions	3
+ - Exhibit C*	General Terms & Conditions	04/2017
+ - Exhibit D	Special Terms & Conditions	7
+ - Exhibit E	FEMA Provisions	5
+ - Exhibit F	Record of Waiver	2

*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 <https://www.dgs.ca.gov/OLS/Resources>**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.)

Color Health, Inc.

CONTRACTOR BUSINESS ADDRESS 831 Mitten Rd, Suite 100	CITY Burlingame	STATE CA	ZIP 94010
PRINTED NAME OF PERSON SIGNING Caroline Savello	TITLE Chief Commercial Officer		
CONTRACTOR AUTHORIZED SIGNATURE <b>Caroline Savello</b>	DATE SIGNED		

Digitally signed by Caroline Savello  
Date: 2021.09.12 11:42:39 -07'00'

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER 21-10630	PURCHASING AUTHORITY NUMBER (If Applicable)
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**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

California Department of Public Health

CONTRACTING AGENCY ADDRESS 1615 Capitol Ave	CITY Sacramento	STATE CA	ZIP 95814
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PRINTED NAME OF PERSON SIGNING Tim Bow	TITLE Procurement Officer
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CONTRACTING AGENCY AUTHORIZED SIGNATURE <b>Timothy Bow</b>	DATE SIGNED
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CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL	EXEMPTION (If Applicable) Executive Order N-25-20-COVID19
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Digitally signed by Timothy Bow  
Date: 2021.09.12 20:54:42 -07'00'

**Exhibit A**  
**Scope of Work**

**1. Service Overview**

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

In response to the Governor's Proclamation of a State of Emergency dated March 4, 2020, and Executive Order N-25-20, due to current public health emergencies, the California Department of Public Health (CDPH) has determined that CDPH must take immediate action.

CDPH is facilitating COVID-19 antigen testing programs throughout the state to continue to increase access to testing. Color Health Care (hereby referred to as Contractor) will support the CDPH's antigen testing programs by providing fulfillment services to manage collection kit inventory and distribution.

**2. Service Location**

The services shall be performed at various locations throughout California as determined by CDPH and Contractor.

**3. Service Hours**

The services shall be provided during various hours as determined by CDPH and Contractor.

**4. Project Representatives**

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

<b>California Department of Public Health</b>	<b>Color Health, Inc.</b>
Chantel Griffin Telephone: (916) 869-0141 Fax: N/A E-mail: Chantal.Griffin@cdph.ca.gov	Caroline Savello Telephone: 650-651-7116 Fax: N/A E-mail: caroline@color.com

- B. Direct all inquiries to:

<b>California Department of Public Health</b>	<b>Color Health, Inc.</b>
Attention: Chantel Griffin MS 0511 1500 Capitol Ave, 72.523 Sacramento, CA 95814  Telephone: (916) 869-0141 Fax: N/A E-mail: Chantal.Griffin@cdph.ca.gov	Attention: Caroline Savello 831 Mitten Rd, Suite 100 Burlingame, CA 94010  Telephone: 650-651-7116 Fax: N/A E-mail: caroline@color.com xxxxxx

**Exhibit A**  
**Scope of Work**

- C. All payments from CDPH to the Contractor; shall be sent to the following address:

<b>Remittance Address</b>
Contractor: Color Health Care
Attention: Caroline Savello
831 Mitten Rd, suite 100
Burlingame, CA 94010
650-651-7116
caroline@color.com

- D. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.

**5. Services to be Performed**

For detailed information regarding services to be performed, please refer to Exhibit A Attachment 1

**6. Additional Provisions**

- A. Contractor shall be responsible to store the kits within the manufacture's temperature requirements.
- B. The ownership of the kits shall remain with the CDPH.
- C. Contractor shall comply with and be responsible for any cost associated with the requirements of Exhibit F.

## Services

The State of California is facilitating COVID-19 antigen testing programs throughout the State to continue to increase access to testing. Color will support the State's antigen testing programs by providing fulfillment services to manage collection kit inventory and distribution.

Antigen testing programs may include Color CLIA-waived programs (e.g., State Department testing), California CLIA-waived programs (e.g., K-12 school testing), or other programs (as determined by the State).

Color will provide the following services subject to the terms set forth below:

- Storing and handling antigen collection kit inventory at a Color warehouse or a partner fulfillment center.
- Standard shipping & handling of antigen kits to State-identified sample collection sites. Expedited shipping is available for the fee set forth below.
- Providing an ordering portal to allow for direct requests for sample collection kits and shipback materials by sites.
- Training sites on how to conduct kit inventory management and use the ordering portal.

## Terms

Component	Fee
Kit Fee for Order Processing, Shipping, and Handling	<i>640 or 1,280-unit shipments:</i> \$0.23 per kit fulfilled  <i>320-unit shipments:</i> \$0.25 per kit fulfilled
<i>Optional add-on:</i> Expedited Shipping Fee to collection sites in California	+\$0.20 per kit fulfilled
Monthly warehousing fee <sup>1</sup>	\$8,000 per month for storage of up to 1 million kits
Processing fees for inbound shipments <sup>2</sup>	\$5,000 per inbound shipment in quantities of up to 500,000 kits  \$10,000 per inbound shipment in quantities of up to 1 million kits

## Notes:

- <sup>1</sup> Monthly warehousing fee covers monthly storage of up to 1,000,000 kits per month. Additional warehousing fees will be charged in units of up to 500,000 kits at \$4,000 per month.
- <sup>2</sup> Fees will apply each time CDPH ships antigen collection kits to Color. Processing fees include labor/overhead for receiving shipments, unloading and storing pallets, and data entry related to Expiry/Lot numbers. Processing fees will be charged in units of 500,000 kits.

## Implementation Responsibilities:

State/CDPH shall perform the following obligations:

- Determines the amount of kits to procure and procures the antigen test supplies, including test kits and materials required for training (e.g., reagents, extra positive controls).
- Collects information from sites required for onboarding (estimated volumes, site contact, address) and shares this data with Color.
- Standard shipping & handling of antigen kits to Color-identified fulfillment center. Provides packing slips with Expiry and Lot numbers for all shipments of antigen kits to Contractor/Color.
- Ships pre-packaged antigen test kits to Color or its partner fulfillment centers in packages of 320 kits (8 boxes of 40 kits). CDPH shall retain title to and risk of loss of kits at all times.
- The CDPH or other applicable state government agency will be solely responsible for inventory management and storing and handling kits at all locations other than Color's warehouse or its partner fulfillment centers, including at CDPH facilities or at collection sites.
- Comply with all applicable laws in distributing and in delivering the kits to the fulfillment center, including compliance with the Clinical Laboratory Improvement Amendments Act of 1988, as reasonably directed by Color's CLIA Laboratory Director.

Contractor/Color will provide the following services in a commercially reasonable and workmanlike manner:

- Storing and handling of antigen collection kit inventory in a commercially reasonable location that complies with all applicable legal requirements for storage of the kits, and subject to reasonable wear and tear and wastage.

- Standard shipping & handling of antigen kits to State-identified sample collection sites. Expedited shipping is available for the fees set forth above.
- Tracking kit inventory by Expiry and Lot number. This does not include tracking kits by serial number.
- Providing an ordering portal to allow for direct requests for sample collection kits and shipback materials by sites.
- Training sites on kit inventory management & the ordering portal.
- The parties agree and acknowledge that Color's obligations hereunder are contingent upon the California Board of Pharmacy granting all duly required licenses or waivers to provide the services to Color and ALOM and granting regulatory approval to the manner in which Color will perform the proposed services. As of the date of this Agreement, BOP has issued a waiver permitting CDPH and Color to conduct the activities herein (the "Waiver"). CDPH acknowledges and agrees that Color's vendor, ALOM, will be performing warehousing and distributions as Color's subcontractor. The State of California hereby deems ALOM exempt under the Waiver granted CDPH and Color. CDPH shall indemnify, defend, and hold harmless Color and ALOM in the event any dispute or controversy arises regarding the scope of the Waiver.
- 95% of orders, on a volume basis, shall be fulfilled within 48 hours of an order being placed on a business day, subject to the CDPH providing inventory for Color to fulfill.

#### **Operational Terms:**

- The minimum order size of antigen test kits Color will ship to Collection Sites is 320 (8 boxes of 40 kits). Kits will also be shipped in packages of 640 (16 boxes of 40 kits) and 1,280 (32 boxes of 40 kits).
- Color shall maintain inventory and warehouse of kits. Kits will be shipped upon demand by the State.
- If the State/CDPH does not provide Expiry and Lot numbers on inbound shipments, any additional labor and handling required will be passed through to the State at cost without markup.

#### **Shipping Terms:**

- Base price (\$0.25 per kit fulfilled for 320-unit shipments; \$0.23 per kit fulfilled for 640-unit or 1,280-unit shipments) includes standard ground delivery shipping only.
- If requested by the State, shipping to collection sites can be expedited at an additional cost of \$0.20 per kit.

**Exhibit B**  
Budget Detail and Payment Provisions

**1. Invoicing and Payment**

- A. In no event shall the Contractor request reimbursement from the State for obligations entered into or for costs incurred prior to the commencement date or after the expiration of this Agreement.
- B. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the amounts shown in Exhibit A Attachment 1.
- C. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears to:

Phebe Lapinig  
California Department of Public Health  
Emergency Preparedness Office  
MS 7002  
1615 Capitol Ave, 73.373  
Sacramento, CA 95814

- D. Invoice shall:

- 1) Be prepared on Contractor letterhead. If invoices are not on produced letterhead invoices must be signed by an authorized official, employee or agent certifying that the expenditures claimed represent activities performed and are in accordance with Exhibit A.
- 2) Invoices must be submitted to CDPH either electronically or in hard copies.
- 3) Identify the billing and/or performance period covered by the invoice.
- 4) Itemize costs for the billing period in the same or greater level of detail as indicated in this agreement. Subject to the terms of this agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by CDPH.

- E. Amounts Payable

The amounts payable under this agreement shall not exceed: \$2,000,000.00

**2. Budget Contingency Clause**

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

**Exhibit B**  
**Budget Detail and Payment Provisions**

**3. Prompt Payment Clause**

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

**4. Timely Submission of Final Invoice**

A. A final undisputed invoice shall be submitted for payment no more than *thirty* (30) calendar days following the expiration or termination date of this agreement, unless a later or alternate deadline is agreed to in writing by the program contract manager. Said invoice should be clearly marked "Final Invoice", indicating that all payment obligations of the State under this agreement have ceased and that no further payments are due or outstanding. The State may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written State approval of an alternate final invoice submission deadline.

**5. Expense Allowability / Fiscal Documentation**

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

B. Contractor shall maintain for review and audit and supply to CDPH upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.

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

**6. Recovery of Overpayments**

A. Contractor agrees that claims based upon the terms of this agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by the State by one of the following options:

- 1) Contractor's remittance to the State of the full amount of the audit exception within 30 days following the State's request for repayment;
- 2) A repayment schedule agreeable between the State and the Contractor.

B. The State reserves the right to select which option as indicated above in paragraph A will be employed and the Contractor will be notified by the State in writing of the claim procedure to be utilized.

C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 days after Contractor's receipt of the State's demand for repayment.

**Exhibit B**  
**Budget Detail and Payment Provisions**

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

**Exhibit D**  
**Special Terms and Conditions [Rev 06-2019]**

(Applicable to consultant and personal service contracts)

The provisions herein apply to this Agreement unless the provisions are removed by reference, or superseded by an alternate provision appearing in Exhibit E of this Agreement.

**Index**

1. Cancellation
2. Intellectual Property Rights
3. Confidentiality of Information
4. Dispute Resolution Process
5. Excise Taxes

**Exhibit D**  
**Special Terms and Conditions**

**1. Cancellation**

- A. This agreement may be cancelled by CDPH without cause upon 30 calendar days advance written notice to the Contractor.
- B. CDPH reserves the right to cancel or terminate this agreement immediately upon written notice for Contractor's breach of the Agreement and failure to cure such breach within the time period specified by CDPH to CDPH's reasonable satisfaction. The Contractor may submit a written request to terminate this agreement only if CDPH substantially fails to perform its responsibilities as provided herein.
- C. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this agreement.
- D. Agreement cancellation or termination shall be effective as of the date indicated in CDPH's notification to the Contractor. The notice shall stipulate any final performance, invoicing or payment requirements.
- E. Upon receipt of a notice of cancellation or termination, the Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent agreement costs.
- F. In the event of early cancellation or termination, the Contractor shall be entitled to compensation for services performed satisfactorily under this agreement and expenses incurred up to the date of cancellation and any non-cancelable obligations incurred in support of this agreement.

**2. Intellectual Property Rights**

**A. Ownership**

- 1)
- 2) CDPH does not require any license of any intellectual property of Contractor ("Color Intellectual Property") to receive the Color Services. If, in the future, CDPH requires a license of Color Intellectual Property to receive the Color Services, Contractor shall grant to CDPH a non-exclusive, worldwide, non-transferable, non-sublicensable, royalty-free license during the term of the Agreement to use Color Intellectual Property to the extent necessary for CDPH to receive the benefits of the Color Services. Such license shall terminate automatically upon termination of this Agreement.
- 3) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
- 4) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It

includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.

- 5) In the performance of this Agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of CDPH's Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of CDPH's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of CDPH. **Except as otherwise set forth herein, neither the Contractor nor CDPH shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to CDPH, Contractor agrees to abide by all license and confidentiality restrictions applicable to CDPH in the third-party's license agreement.
- 6) Contractor further agrees to assist and cooperate with CDPH in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce CDPH's Intellectual Property rights and interests.

## B. Retained Rights / License Rights

- 1) Contractor shall retain title to all of its Intellectual Property..
- 2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of CDPH or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

## C. Copyright

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

## D. Patent Rights

## E. [Intentionally left blank]. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i)

obtaining CDPH's prior written approval; and (ii) granting to or obtaining for CDPH, without additional compensation, a license, as described in Paragraph b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon the these terms is unattainable, and CDPH determines that the Intellectual Property should be included in or is required for Contractor's performance of this Agreement, Contractor shall obtain a license under terms acceptable to CDPH.

## F. Warranties

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

## G. Intellectual Property Indemnity

- 1) Contractor shall indemnify, defend and hold harmless CDPH and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which

any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDPH's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. CDPH reserves the right to participate in , any such infringement action brought against CDPH.

- 2) Should any Intellectual Property licensed by the Contractor to CDPH under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve CDPH's right to use the licensed Intellectual Property in accordance with this Agreement at no expense to CDPH. CDPH shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for CDPH to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property..
- 3) Contractor agrees that damages alone would be inadequate to compensate CDPH for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges CDPH would suffer irreparable harm in the event of such breach and agrees CDPH shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

## **H. Federal Funding**

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

## **I. Survival**

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

## **3. Confidentiality of Information**

- A. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.
- B. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement or as required by law. As permitted by law, Color may use such identifying information for Color's internal quality assurance/improvement purposes.
- C. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDPH Program Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.

- D. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than CDPH without prior written authorization from the CDPH Program Contract Manager, except if disclosure is required by State or Federal law.
- E. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.
- F. As deemed applicable by CDPH, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

**Exhibit D**  
**Special Terms and Conditions**

**4. Dispute Resolution Process**

A Contractor grievance exists whenever there is a dispute arising from CDPH's action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDPH, the Contractor must seek resolution using the procedure outlined below.

- A. The Contractor should first informally discuss the problem with the CDPH Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
- B. When appealing to the second level the Contractor must prepare an appeal indicating the reasons for disagreement with the Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal. The decision rendered by the Deputy Director or his/her designee shall be the final administrative determination of the Department.
- C. Unless otherwise stipulated in writing by CDPH, all dispute, grievance and/or appeal correspondence shall be directed to the CDPH Program Contract Manager.
- D. There are organizational differences within CDPH's funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDPH Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

**5. Excise Tax**

The State of California is exempt from federal excise taxes, and no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

## **FEMA PROVISIONS**

### **1. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

- A. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- D. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through(8) in every subcontract or purchase order unless exempted by rules,

regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the

compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon

## 2. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Compliance with the Contract Work Hours and Safety Standards Act.

- A. ***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.
- B. ***Violation; liability for unpaid wages; liquidated damages.*** In the event of any violation of the clause set forth in paragraph (b)(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 (b)(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 (b)(1) of this section.
- C. ***Withholding for unpaid wages and liquidated damages.*** The State of California 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 (b)(2) of this section.

- D. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (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 (b)(1) through (4) of this section.

### **3. CLEAN AIR ACT**

- A. 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.
- B. The contractor agrees to report each violation to the California Air Resources Board and understands and agrees that the California Air Resources Board will, in turn, report each violation as required to assure notification to the Department of Resources Recycling and Recovery, the California Governor's Office of Emergency Services, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
- C. 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.

### **4. THE FEDERAL WATER POLLUTION CONTROL ACT**

- A. 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.
- B. The contractor agrees to report each violation to the State Water Resources Control Board and understands and agrees that the State Water Resources Control Board 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.
- C. 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.

### **5. DEBARMENT AND SUSPENSION CLAUSE**

- A. This contract 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).
- B. 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.
- C. This certification is a material representation of fact relied upon by the State of California. 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 of California, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. 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.

## **6. BYRD ANTI-LOBBYING CLAUSE**

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

### **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.

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Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date:

## **7. PROCUREMENT OF RECOVERED MATERIALS**

- A. In the performance of this contract 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;
  - i. Meeting contract performance requirements; or
  - i. At a reasonable price.
- B. Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

## **8. ACCESS TO RECORDS**

The following access to records requirements apply to this contract:

- A. The Contractor agrees to provide the State of California, the FEMA Administrator, the Controller 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 contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever of to copy excerpts and transcriptions as reasonably needed.
- C. The contractor agrees to provide the FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the contract.
- D. In compliance with the Disaster Recovery Act of 2018, the State of California and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

## **9. DHS SEAL, LOGO, AND 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.

## **10. 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 only. The contractor will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives.

## **11. NO OBLIGATION BY FEDERAL GOVERNMENT**

The Federal Government is not a party to this contract 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 contract.

## **12. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

The contractor acknowledges the 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's action pertaining to this contract.

**From:** [Sodergren, Anne@DCA](#)  
**To:** [Jacobson, Kathleen@CDPH](#); [Bow, Tim@CDPH](#)  
**Cc:** [Kirchmeyer, Kimberly@DCA](#); [Smiley, Eileen@DCA](#)  
**Subject:** COVID-19 Test Distribution to State Agencies  
**Date:** Monday, September 6, 2021 8:03:44 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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**EXTERNAL EMAIL.** Links/attachments may not be safe. To report suspicious emails, click "Report Phish" button.

Good evening,

Please see the below waiver approved by President Oh. The waiver becomes effective tomorrow and will remain in place for 90 days.

Thank you,

Anne

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### **COVID-19 Test Distribution to State Agencies**

In response to the Governor's emergency declaration and consistent with the authority of the Board to waive Pharmacy Law or the regulations adopted pursuant to it, the Board president, through his delegated authority, approves the below waiver related to COVID-19 test distribution sites.

The California Department of Public Health (CDPH) and its contracted vendor, COLOR, are granted a limited waiver from complying with any statutory or regulatory restriction or licensing requirement under Pharmacy Law and the implementing regulations related to the storage and distribution of FDA-authorized COVID-19 tests consistent with the provisions of the contract between CDPH and COLOR (the contract) under the following conditions.

1. Storage and distribution sites are limited to facilities licensed as a laboratory approved by the California Department of Public Health consistent with the provisions of the contract.
2. The COVID-19 tests are the property of the CDPH and COLOR does not take title to such kits as a wholesaler.
3. Distribution activities are performed by appropriately trained employees under the supervision of the laboratory director and consistent with the provisions of the contract.
4. The laboratory director shall ensure products are handled and stored consistent with the manufacturer's instructions.
5. Documentation of products inappropriately handled or stored is maintained. Such products shall not be distributed, but returned for destruction.
6. The laboratory director shall ensure compliance with manufacturer recalls as applicable.

**Issued:** September 7, 2021

**Expire:** December 5, 2021

**Anne Sodergren**, Executive Officer

California State Board of Pharmacy

(916) 518-3110 | FAX (916) 574-8618 | [www.pharmacy.ca.gov](http://www.pharmacy.ca.gov)

**Be Aware and Take Care: Talk to your Pharmacist!**