

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

20-10951

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

CONTRACTOR NAME

National Foundation for the Centers for Disease Control and Prevention

2. The term of this Agreement is:

START DATE

04/01/2021

THROUGH END DATE

07/31/2023

3. The maximum amount of this Agreement is:

\$18,306,857.00 Eighteen Million Three Hundred Six Thousand Eight Hundred Fifty-Seven Dollars

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

| Exhibits      | Title   | Pages   |
|---------------|---|---------|
| Exhibit A     | Scope of Work                                 | 3       |
| Exhibit B     | Budget Detail and Payment Provisions          | 3       |
|               | Attachments I - IV                            | 12      |
| + Exhibit C * | General Terms and Conditions                  | 04/2017 |
| + Exhibit D   | Special Terms and Conditions                  | 7       |
| + Exhibit E   | Additional Provisions                         | 2       |
| + Exhibit F   | Information Privacy and Security Requirements | 12      |
| + Exhibit G   | FEMA Provisions                               | 8       |

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

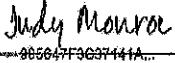
These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

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.)

National Foundation for the Centers for Disease Control and Prevention

|   |   |             |              |
|---|---|-------------|--------------|
| CONTRACTOR BUSINESS ADDRESS<br>600 Peachtree Street, NE, Suite 1000   | CITY<br>Atlanta                           | STATE<br>GA | ZIP<br>30308 |
| PRINTED NAME OF PERSON SIGNING<br>Judith Monroe, MD   | TITLE<br>President and CEO                |             |              |
| CONTRACTOR AUTHORIZED SIGNATURE<br><br>985647F0607441A | DATE SIGNED<br>4/20/2021   6:03:13 PM EDT |             |              |

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

20-10951

PURCHASING AUTHORITY NUMBER (If Applicable)

**STATE OF CALIFORNIA**

## CONTRACTING AGENCY NAME

California Department of Public Health

## CONTRACTING AGENCY ADDRESS

1616 Capitol Avenue

CITY

Sacramento

STATE

CA

ZIP

95814

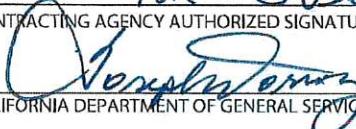
## PRINTED NAME OF PERSON SIGNING

Jeffrey Mapes *for Joseph Torrez*

TITLE

Chief, Contracts Management Unit

## CONTRACTING AGENCY AUTHORIZED SIGNATURE



DATE SIGNED

*7/30/21*

## CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

PC 1102

Executive Order - N-25-20-COVID19

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 consistent with the State's Public Contract Code (PCC) 1102.

The National Foundation for the Centers for Disease Control and Prevention (CDC-F) will provide staffing for the CDPH California Connected program (CC). The CC program consists of expanding a diverse and trained workforce of disease investigators.

**2. Service Location**

The services shall be performed in multiple locations within the United States.

**3. Service Hours**

The services shall be provided during normal contractor working hours 8:00 a.m. to 5:00 p.m., Monday through Friday, including state official holidays.

**4. Project Representatives**

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

| <b>California Department of Public Health</b>  | <b>National Foundation for the Centers for Disease Control and Prevention, Inc.</b>  |
|--|--|
| Terry McIntire<br>Telephone: (916) 552-8617<br>Fax: (916) 55208973<br>E-mail: <a href="mailto:Terry.mcintire@cdph.ca.gov">Terry.mcintire@cdph.ca.gov</a> | Turquoise Sidibe<br>Telephone: (404) 443-1113<br>Fax: (404) 653-0330<br>E-mail: <a href="mailto:tsidibe@cdcfoundation.org">tsidibe@cdcfoundation.org</a> |

B. Direct all inquiries to:

| <b>California Department of Public Health</b>   | <b>National Foundation for the Centers for Disease Control and Prevention, Inc.</b>   |
|---|---|
| Division of Communicable Disease Control<br>Attention: Terry McIntire<br>Mail Station Code 7300<br>1616 Capitol Avenue, Suite 74.6.660<br>P.O. Box 997377-7300<br>Sacramento, CA 95899-7413<br><br>Telephone: (916) 552-8617<br>Fax: (916) 552-8973<br>E-mail: <a href="mailto:Terry.mcintire@cdph.ca.gov">Terry.mcintire@cdph.ca.gov</a> | Attention: Cullen Bryenton, Vice President of Finance and Controller<br>P.O. Box 117300<br>Atlanta, GA 30368-7300<br><br>Telephone: (404) 523-1872<br>Fax: (404) 653-0330<br>E-mail: <a href="mailto:cbryenton@cdcfoundation.org">cbryenton@cdcfoundation.org</a> |

Exhibit A  
Scope of Work

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

| <b>Remittance Address</b>  |
|--|
| National Foundation for the Centes for Disease<br>Control and Prevention, Inc. |
| Attention: Cullen Bryenton   |
| P.O. Box 117300  |
| Atlanta, GA 30368-7300   |
| Phone: (404) 523-1872  |
| Fax: (404) 653-0330  |
| Email: cbryenton@cdcfoundation.org   |

- 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. Progress Reports or Meetings**

- A. Contractor shall attend meetings with state personnel at intervals determined by CDPH to determine if the Contractor is on the right track, whether the project is on schedule, provide communication of interim findings, and afford occasions for airing difficulties or special problems encountered so that remedies can be developed quickly.

**6. Services to be Performed**

Contractor shall perform the following services:

**Goal 1:** Provide staffing and management of public health positions to support CC's efforts to expand a diverse and trained workforce of disease investigators and work with the State of California to develop a statewide contact tracing data management and communication platform

**A. Objective 1: Major Tasks/Activities:**

- 1) Hire and manage staff
  - a) **Time Line:** Target completion of initial hires is within 90 days of signing of the Agreement and backfilling of open positions will be conducted up to 90 days prior to the end of this Agreement.
  - b) **Deliverables/Performance Measures:** Status updates on hiring to be provided every two-weeks until completion of initial hiring. Monthly check-ins with the Division of Communicable Disease Control to ensure satisfactory performance of staff.

Exhibit A  
Scope of Work

**B. Objective 2: Major Tasks/Activities:**

- 1) Provide fiscal and narrative reports as well as a final report.
  - a) **Time Line:** Annually or as requested by CDPH.
  - b) **Deliverables/Performance Measures:** Annual fiscal and narrative reports and final report upon completion of this Agreement.

**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 Budget Line Items amounts/Exhibit B, Cost Sheet specified in Attachment I - IV, of this Exhibit.
- C. Invoices shall include the Agreement Number and shall be submitted not more frequently than monthly in arrears to:

Ms. Terry McIntire  
California Department of Public Health  
Division of Communicable Disease Control  
MS 7300  
P.O. Box 997377  
Sacramento, CA 95899-7300

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 \$18,306,857.00.

**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 *ninety (90)* 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 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.

**7. Travel and Per Diem Reimbursement**

Any reimbursement for necessary travel and per diem shall, unless otherwise specified in this Agreement, be at the rates currently in effect, as established by the California Department of Human Resources (Cal HR). If the Cal HR rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary. No travel outside the state of California shall be reimbursed without prior authorization from the CDPH. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.



April 1, 2021 - June 30, 2021

Year 1

April 1, 2021 - June 30, 2021

**Exhibit B - Attachment I**  
**Year 1**  
**April 1, 2021 - June 30, 2021**

National Foundation for the Centers  
 for Disease Control and Prevention  
 20-19051

| <b>Classification</b>             | <b>FT Salary</b> | <b>Hours</b> | <b>Personnel Subtotal</b> | <b>Fringe Benefits @ 29%</b> | <b>Indirect @ 12.5%</b> | <b>Total</b>           |
|-----------------------------------|------------------|--------------|---------------------------|------------------------------|-------------------------|------------------------|
| Communicable Disease Investigator | \$74,999.86      | 519          | \$ 18,749.97              | \$ 5,437.49                  | \$ 3,023.00             | \$ 27,210.45           |
| CDCF Recruiter                    | \$124,800.00     | 519          | \$ 31,200.00              | \$ 9,048.00                  | \$ 5,031.00             | \$ 45,279.00           |
| CDCF Program Manager              | \$105,000.00     | 519          | \$ 26,250.00              | \$ 7,612.50                  | \$ 4,233.00             | \$ 38,095.50           |
| CDCF Team Lead                    | \$115,000.00     | 51.9         | \$ 2,875.00               | \$ 833.75                    | \$ 464.00               | \$ 4,172.75            |
| CDCF HR Coordinator               | \$55,000.00      | 51.9         | \$ 1,375.00               | \$ 398.75                    | \$ 222.00               | \$ 1,995.75            |
| CDCF Federal Budget Analyst       | \$90,000.00      | 51.9         | \$ 2,250.00               | \$ 652.50                    | \$ 363.00               | \$ 3,265.50            |
| <b>Total Personnel</b>            |                  |              | <b>\$ 1,267,688.12</b>    | <b>\$ 367,629.55</b>         | <b>\$ 204,399.00</b>    | <b>\$ 1,839,716.67</b> |
| <b>Operating Expenses</b>         |                  |              |                           |                              |                         |                        |
| General Expenses @ \$2,000/person | \$ 31,000.00     |              |                           |                              | \$ 3,875.00             | \$ 34,875.00           |
| Communications @ \$720/person     | \$ 11,160.00     |              |                           |                              | \$ 1,395.00             | \$ 12,555.00           |
| Travel @ \$3,000/person           | \$ 46,500.00     |              |                           |                              | \$ 5,813.00             | \$ 52,313.00           |
| <b>Total OE&amp;E</b>             |                  |              |                           |                              | <b>\$ 11,083.00</b>     | <b>\$ 99,743.00</b>    |
| <b>TOTAL</b>                      |                  |              |                           |                              | <b>\$ 215,497.21</b>    | <b>\$ 1,939,474.88</b> |





**Exhibit B - Attachment II**  
**Year 2**  
**July 1, 2021 - June 30, 2022**

National Foundation for the Centers  
of Disease Control and Prevention  
20-10950

| Classification                    | FT Salary           | Hours | Personnel Subtotal  | Fringe Benefits @ 29% | Indirect @ 12.5%     | Total                  |
|-----------------------------------|---------------------|-------|---------------------|-----------------------|----------------------|------------------------|
| Communicable Disease Investigator | \$74,999.86         | 2080  | \$ 75,562.36        | \$ 21,913.08          | \$ 12,184.00         | \$ 109,659.44          |
| CDCF Recruiter                    | \$124,800.00        | 312   | \$ 18,720.00        | \$ 5,428.80           | \$ 3,019.00          | \$ 27,167.80           |
| CDCF Program Manager              | \$105,000.00        | 2080  | \$ 105,000.00       | \$ 30,450.00          | \$ 16,931.00         | \$ 152,381.00          |
| CDCF Team Lead                    | \$115,000.00        | 208   | \$ 11,500.00        | \$ 3,335.00           | \$ 1,854.00          | \$ 16,689.00           |
| CDCF HR Coordinator               | \$55,000.00         | 208   | \$ 5,500.00         | \$ 1,595.00           | \$ 887.00            | \$ 7,982.00            |
| CDCF Federal Budget Analyst       | \$90,000.00         | 208   | \$ 9,000.00         | \$ 2,610.00           | \$ 1,451.00          | \$ 13,061.00           |
| <b>TOTAL Personnel</b>            | <b>\$ 5,000,785</b> |       | <b>\$ 1,450,228</b> | <b>\$ 406,355</b>     | <b>\$ 206,355</b>    | <b>\$ 7,257,367</b>    |
| <b>Operating Expenses</b>         |                     |       |                     |                       |                      |                        |
| General Expenses @ \$2,000/person | \$ 124,000.00       |       |                     |                       | \$ 15,500.00         | \$ 139,500.00          |
| Communications @ \$720/person     | \$ 44,640.00        |       |                     |                       | \$ 5,580.00          | \$ 50,220.00           |
| Travel @ \$3,000/person           | \$ 186,000.00       |       |                     |                       | \$ 23,250.00         | \$ 209,250.00          |
| <b>Total O&amp;E</b>              |                     |       |                     |                       | <b>\$ 44,330.00</b>  | <b>\$ 398,970.00</b>   |
| <b>TOTAL</b>                      |                     |       |                     |                       | <b>\$ 850,706.52</b> | <b>\$ 7,656,358.68</b> |





**Exhibit B - Attachment III**  
**Year 3**  
**July 1, 2022 - June 30, 2023**

National Foundation for the Centers  
 for Disease Control and Prevention  
 20-19051

| Classification                    | FT Salary     | Hours | Personnel Subtotal  | Fringe Benefits @ 29% | Indirect @ 12.5%       | Total                |
|-----------------------------------|---------------|-------|---------------------|-----------------------|------------------------|----------------------|
| Communicable Disease Investigator | \$77,249.86   | 2080  | \$ 77,829.23        | \$ 22,570.48          | \$ 12,550.00           | \$ 112,949.71        |
| CDCF Recruiter                    | \$124,800.00  | 312   | \$ 18,720.00        | \$ 5,428.80           | \$ 3,019.00            | \$ 27,167.80         |
| CDCF Program Manager              | \$105,000.00  | 2080  | \$ 105,000.00       | \$ 30,450.00          | \$ 16,931.00           | \$ 152,381.00        |
| CDCF Team Lead                    | \$115,000.00  | 208   | \$ 11,500.00        | \$ 3,335.00           | \$ 1,854.00            | \$ 16,689.00         |
| CDCF HR Coordinator               | \$55,000.00   | 208   | \$ 5,500.00         | \$ 1,595.00           | \$ 887.00              | \$ 7,982.00          |
| CDCF Federal Budget Analyst       | \$90,000.00   | 208   | \$ 9,000.00         | \$ 2,610.00           | \$ 1,451.00            | \$ 13,061.00         |
| <b>TOTAL Personnel</b>            |               |       | <b>\$ 5,146,358</b> | <b>\$ 1,492,444</b>   | <b>\$ 829,848</b>      | <b>\$ 7,468,650</b>  |
| <b>Operating Expenses</b>         |               |       |                     |                       |                        |                      |
| General Expenses @ \$2,000/person | \$ 124,000.00 |       |                     |                       | \$ 15,500.00           | \$ 139,500.00        |
| Communications @ \$720/person     | \$ 44,640.00  |       |                     |                       | \$ 5,580.00            | \$ 50,220.00         |
| Travel @ \$3,000/person           | \$ 186,000.00 |       |                     |                       | \$ 23,250.00           | \$ 209,250.00        |
| <b>Total OE&amp;E</b>             |               |       |                     |                       | <b>\$ 44,330.00</b>    | <b>\$ 398,970.00</b> |
| <b>TOTAL</b>                      |               |       |                     | <b>\$ 874,180.25</b>  | <b>\$ 7,867,622.21</b> |                      |



**Exhibit B - Attachment IV**

National Foundation for the Centers  
for Disease Control and Prevention  


**Exhibit B - Attachment IV**  
**Year 4**  
**July 1, 2023 - July 31, 2023**

National Foundation for the Centers  
 for Disease Control and Prevention  
 20-19051

| Classification                    | FT Salary    | Hours | Personnel Subtotal | Fringe Benefits @ 29% | Indirect @ 12.5%    | Total                |
|-----------------------------------|--------------|-------|--------------------|-----------------------|---------------------|----------------------|
| Communicable Disease Investigator | \$79,567.35  | 168   | \$ 6,630.61        | \$ 1,922.88           | \$ 1,069.00         | \$ 9,622.49          |
| Communicable Disease Investigator | \$79,567.35  | 168   | \$ 6,630.61        | \$ 1,922.88           | \$ 1,069.00         | \$ 9,622.49          |
| CDCF Recruiter                    | \$124,800.00 | 26    | \$ 1,560.00        | \$ 452.40             | \$ 252.00           | \$ 2,264.40          |
| CDCF Program Manager              | \$105,000.00 | 168   | \$ 105,000.00      | \$ 30,450.00          | \$ 16,931.00        | \$ 152,381.00        |
| CDCF Team Lead                    | \$115,000.00 | 16.8  | \$ 11,500.00       | \$ 3,335.00           | \$ 1,854.00         | \$ 16,689.00         |
| CDCF HR Coordinator               | \$55,000.00  | 16.8  | \$ 5,500.00        | \$ 1,595.00           | \$ 887.00           | \$ 7,982.00          |
| CDCF Federal Budget Analyst       | \$90,000.00  | 16.8  | \$ 9,000.00        | \$ 2,610.00           | \$ 1,451.00         | \$ 13,061.00         |
| <b>TOTAL Personnel</b>            |              |       | <b>\$ 558,245</b>  | <b>\$ 161,891</b>     | <b>\$ 90,011</b>    | <b>\$ 810,148</b>    |
| <b>Operating Expenses</b>         |              |       |                    |                       |                     |                      |
| General Expenses @ \$2,000/person | \$ 10,333.33 |       |                    |                       | \$ 1,292.00         | \$ 11,625.33         |
| Communications @ \$720/person     | \$ 3,720.00  |       |                    |                       | \$ 465.00           | \$ 4,185.00          |
| Travel @ \$3,000/person           | \$ 15,500.00 |       |                    |                       | \$ 1,938.00         | \$ 17,438.00         |
| <b>Total OE&amp;E</b>             |              |       |                    |                       | <b>\$ 3,695.00</b>  | <b>\$ 33,248.33</b>  |
| <b>TOTAL</b>                      |              |       |                    |                       | <b>\$ 93,711.25</b> | <b>\$ 843,401.23</b> |

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

**1. Cancellation**

- A. This agreement may be cancelled by either party without cause upon 30 calendar days advance written notice to the other party.
- B. Either party may cancel or terminate this agreement immediately for cause.
- C. The term "for cause" shall mean a failure 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 the notification to the party. 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) Except where CDPH has agreed in a signed writing to accept a license, CDPH shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.

2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.

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

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

- 3) In the performance of this Agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of CDPH's Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of CDPH's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of CDPH. **Except as otherwise set forth herein, neither the Contractor nor CDPH shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to CDPH, Contractor agrees to abide by all license and confidentiality restrictions applicable to CDPH in the third-party's license agreement.
- 4) Contractor agrees to cooperate with CDPH in establishing or maintaining CDPH's exclusive rights in the Intellectual Property, and in assuring CDPH's sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to CDPH all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or CDPH and which result directly or indirectly from this Agreement or any subcontract.
- 5) Contractor further agrees to assist and cooperate with CDPH in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce CDPH's Intellectual Property rights and interests.

**B. Retained Rights / License Rights**

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

**C. Copyright**

- 1) Contractor agrees that for purposes of copyright law, all works [as defined in Section a, subparagraph (2)(a)] of authorship made by or on behalf of Contractor in connection with

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

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**

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

**E. Third-Party Intellectual Property**

Except as provided herein, Contractor agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining CDPH's prior written approval; and (ii) granting to or obtaining for CDPH, without additional compensation, a license, as described in 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

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

of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.

- d. Neither Contractor's performance nor any part of its performance will violate the right of privacy of or constitute a libel or slander against any person or entity.
  - e. It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
  - f. It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to CDPH in this Agreement.
  - g. It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
  - h. It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.
- 2) CDPH MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

**G. Intellectual Property Indemnity**

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

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

- 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 its own expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for CDPH to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, CDPH shall be entitled to seek any rights and remedies available at law or in equity.
- 3) Contractor agrees that damages alone would be inadequate to compensate CDPH for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges CDPH would suffer irreparable harm in the event of such breach and agrees CDPH shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

**H. Federal Funding**

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

**I. Survival**

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

**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.
- 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.

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

- 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.

**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. Removal of Contractor**

CDPH reserves the right to immediately remove any contractor personnel from performing work for CDPH for any reason. In the event CDPH decides to remove any contractor personnel, CDPH shall provide notice to contractor via the contact information listed in Section 4 of Exhibit A of this agreement.

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

**6. 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.

**Exhibit E**  
Additional Provisions

Contractor shall comply with the following insurance requirements:

A. General Provisions Applying to All Policies

- 1) 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 and required endorsements must be received by the State at least ten (10) days prior to the expiration of this insurance. Any new insurance must comply with the original Agreement terms.
- 2) Policy Cancellation or Termination and Notice of Non-Renewal – Contractor shall provide to the CDPH within five (5) business days following receipt by Contractor a copy of any cancellation or non-renewal of insurance required by this Contract. In the event Contractor fails to keep in effect at all times the specified insurance coverage, the CDPH may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- 3) Premiums, Assessments and Deductibles – Contractor is responsible for any premiums, policy assessments, deductibles or self-insured retentions contained within their insurance program.
- 4) Primary Clause – Any required insurance contained in this Agreement shall be primary and not excess or contributory to any other insurance carried by the CDPH.
- 5) 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 VI. If Contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.
- 6) Endorsements – Any required endorsements requested by the CDPH must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
- 7) Inadequate Insurance – Inadequate or lack of insurance does not negate Contractor’s obligations under the Agreement.
- 8) 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 under Contractor’s insurance or supply evidence of the Subcontractor’s insurance to the CDPH equal to policies, coverages, and limits required of Contractor.

B. Insurance Coverage Requirements

Contractor shall display evidence of certificate of insurance evidencing the following coverage:

- 1) Commercial General Liability – Contractor shall maintain general liability with limits not less than \$1,000,000 per occurrence for bodily injury and property damage 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 and advertising injury, and liability assumed under an insured Agreement. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to Contractor’s limit of liability. The policy shall be

**Exhibit E**  
Additional Provisions

endorsed to include, "The State of California, its officers, agents, employees, and servants as additional insured, but only insofar as the operations under this Agreement are concerned." This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.

- 2) Automobile Liability (when required) – Contractor shall maintain motor vehicle liability insurance with limits not less than \$1,000,000 combined single limit per accident. 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 is required. The policy shall be endorsed to include, "The State of California, its officers, agents, employees, and servants as additional insured, but only insofar as the operations under this Agreement are concerned." This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.
- 3) Worker's Compensation and Employer's Liability (when required) – 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. Employer's liability limits of \$1,000,000 are required. When work is performed on State owned or controlled property the policy shall contain a waiver of subrogation endorsement in favor of the State. This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.
- 4) Professional Liability (when required) – Contractor shall maintain professional liability covering any damages caused by a negligent error; act or omission with limits not less than \$1,000,000 per occurrence and \$1,000,000 policy aggregate. The policy's retroactive date must be displayed on the certificate of insurance and must be before the date this Agreement was executed or before the beginning of Agreement work.

**1. Subcontract Requirements**

No Subcontractor shall be utilized under this agreement.

**2. Procurement Rules**

Contractor shall not use State funds allocated under this Agreement to purchase equipment. As used in this paragraph, "equipment" means an article of nonexpendable, tangible property, including furniture, having a useful life of at least one (1) year and a unit cost of five thousand dollars (\$5,000) or more.

**3. Prohibited Use of State Funds for Software**

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

**Exhibit F**  
Information Privacy and Security Requirements  
(For Non-HIPAA/HITECH Act Contracts)

This Information Privacy and Security Requirements Exhibit (For Non-HIPAA/HITECH Act Contracts) (hereinafter referred to as "this Exhibit") sets forth the information privacy and security requirements Contractor is obligated to follow with respect to all personal and confidential information (as defined herein) disclosed to Contractor, or collected, created, maintained, stored, transmitted or used by Contractor for or on **behalf** of the California Department of Public Health (hereinafter "CDPH"), pursuant to Contractor's agreement with CDPH. (Such personal and confidential information is referred to herein collectively as "CDPH PCI".) CDPH and Contractor desire to protect the privacy and provide for the security of CDPH PCI pursuant to this Exhibit and in compliance with state and federal laws applicable to the CDPH PCI.

- I. Order of Precedence: With respect to information privacy and security requirements for all CDPH PCI, the terms and conditions of this Exhibit shall take precedence over any conflicting terms or conditions set forth in any other part of the agreement between Contractor and CDPH, including Exhibit A (Scope of Work), all other exhibits and any other attachments, and shall prevail over any such conflicting terms or conditions.
- II. Effect on lower tier transactions: The terms of this Exhibit shall apply to all contracts, subcontracts, and subawards, and the information privacy and security requirements Contractor is obligated to follow with respect to CDPH PCI disclosed to Contractor, or collected, created, maintained, stored, transmitted or used by Contractor for or on behalf of CDPH, pursuant to Contractor's agreement with CDPH. When applicable the Contractor shall incorporate the relevant provisions of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.
- III. Definitions: For purposes of the agreement between Contractor and CDPH, including this Exhibit, the following definitions shall apply:

A. Breach:

"Breach" means:

1. the unauthorized acquisition, access, use, or disclosure of CDPH PCI in a manner which compromises the security, confidentiality or integrity of the information; or
2. the same as the definition of "breach of the security of the system" set forth in California Civil Code section 1798.29(f).

B. Confidential Information: "Confidential information" means information that:

1. does not meet the definition of "public records" set forth in California Government Code section 6252(e), or is exempt from disclosure under any of the provisions of Section 6250, et seq. of the California Government Code or any other applicable state or federal laws; or
2. is contained in documents, files, folders, books or records that are clearly labeled, marked or designated with the word "confidential" by CDPH.

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Information Privacy and Security Requirements  
(For Non-HIPAA/HITECH Act Contracts)

- C. Disclosure: “Disclosure” means the release, transfer, provision of, access to, or divulging in any manner of information outside the entity holding the information.
- D. PCI: “PCI” means “personal information” and “confidential information” (as these terms are defined herein):
- E. Personal Information: “Personal information” means information, in any medium (paper, electronic, oral) that:
  - 1. directly or indirectly collectively identifies or uniquely describes an individual; or
  - 2. could be used in combination with other information to indirectly identify or uniquely describe an individual, or link an individual to the other information; or
  - 3. meets the definition of “personal information” set forth in California Civil Code section 1798.3, subdivision (a) or
  - 4. is one of the data elements set forth in California Civil Code section 1798.29, subdivision (g)(1) or (g)(2); or
  - 5. meets the definition of “medical information” set forth in either California Civil Code section 1798.29, subdivision (h)(2) or California Civil Code section 56.05, subdivision (j); or
  - 6. meets the definition of “health insurance information” set forth in California Civil Code section 1798.29, subdivision (h)(3); or
  - 7. is protected from disclosure under applicable state or federal law.
- F. Security Incident: “Security Incident” means:
  - 1. an attempted breach; or
  - 2. the attempted or successful unauthorized access or disclosure, modification or destruction of CDPH PCI, in violation of any state or federal law or in a manner not permitted under the agreement between Contractor and CDPH, including this Exhibit; or
  - 3. the attempted or successful modification or destruction of, or interference with, Contractor’s system operations in an information technology system, that negatively impacts the confidentiality, availability or integrity of CDPH PCI; or
  - 4. any event that is reasonably believed to have compromised the confidentiality, integrity, or availability of an information asset, system, process, data storage, or transmission. Furthermore, an information security incident may also include an event that constitutes a violation or imminent threat of violation of information security policies or procedures, including acceptable use policies.

**Exhibit F**  
Information Privacy and Security Requirements  
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- G. **Use:** “Use” means the sharing, employment, application, utilization, examination, or analysis of information.
- IV. **Disclosure Restrictions:** The Contractor and its employees, agents, and subcontractors shall protect from unauthorized disclosure any CDPH PCI. The Contractor shall not disclose, except as otherwise specifically permitted by the agreement between Contractor and CDPH (including this Exhibit), any CDPH PCI to anyone other than CDPH personnel or programs without prior written authorization from the CDPH Program Contract Manager, except if disclosure is required by State or Federal law.
- V. **Use Restrictions:** The Contractor and its employees, agents, and subcontractors shall not use any CDPH PCI for any purpose other than performing the Contractor's obligations under its agreement with CDPH.
- VI. **Safeguards:** The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the privacy, confidentiality, security, integrity, and availability of CDPH PCI, including electronic or computerized CDPH PCI. At each location where CDPH PCI exists under Contractor's control, the Contractor 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 Contractor's operations and the nature and scope of its activities in performing its agreement with CDPH, including this Exhibit, and which incorporates the requirements of Section VII, Security, below. Contractor shall provide CDPH with Contractor's current and updated policies within five (5) business days of a request by CDPH for the policies.
- VII. **Security:** The Contractor shall take any and all steps reasonably necessary to ensure the continuous security of all computerized data systems containing CDPH PCI. These steps shall include, at a minimum, complying with all of the data system security precautions listed in the Contractor Data Security Standards set forth in Attachment 1 to this Exhibit.
- VIII. **Security Officer:** At each place where CDPH PCI is located,, the Contractor shall designate a Security Officer to oversee its compliance with this Exhibit and to communicate with CDPH on matters concerning this Exhibit.
- IX. **Training:** The Contractor shall provide training on its obligations under this Exhibit, at its own expense, to all of its employees who assist in the performance of Contractor's obligations under Contractor's agreement with CDPH, including this Exhibit, or otherwise use or disclose CDPH PCI.
- A. The Contractor shall require each employee who receives training to certify, either in hard copy or electronic form, the date on which the training was completed.
  - B. The Contractor shall retain each employee's certifications for CDPH inspection for a period of three years following contract termination or completion.
  - C. Contractor shall provide CDPH with its employee's certifications within five (5) business days of a request by CDPH for the employee's certifications.

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Information Privacy and Security Requirements  
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- X. Employee Discipline: Contractor shall impose discipline that it deems appropriate (in its sole discretion) on such employees and other Contractor workforce members under Contractor's direct control who intentionally or negligently violate any provisions of this Exhibit.

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Information Privacy and Security Requirements  
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XI. Breach and Security Incident Responsibilities:

- A. Notification to CDPH of Breach or Security Incident: The Contractor shall notify CDPH **immediately by telephone call plus email or fax** upon the discovery of a breach (as defined in this Exhibit), **and within twenty-four (24) hours by email or fax** of the discovery of any security incident (as defined in this Exhibit), unless a law enforcement agency determines that the notification will impede a criminal investigation, in which case the notification required by this section shall be made to CDPH immediately after the law enforcement agency determines that such notification will not compromise the investigation. Notification shall be provided to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer, using the contact information listed in Section XI(F), below. If the breach or security incident is discovered after business hours or on a weekend or holiday and involves CDPH PCI in electronic or computerized form, notification to CDPH shall be provided by calling the CDPH Information Security Office at the telephone numbers listed in Section XI(F), below. For purposes of this Section, breaches and security incidents shall be treated as discovered by Contractor as of the first day on which such breach or security incident is known to the Contractor, or, by exercising reasonable diligence would have been known to the Contractor. Contractor shall be deemed to have knowledge of a breach if such breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is an employee or agent of the Contractor.

Contractor shall take:

1. prompt corrective action to mitigate any risks or damages involved with the breach or security incident and to protect the operating environment; and
  2. any action pertaining to a breach required by applicable federal and state laws, including, specifically, California Civil Code section 1798.29.
- B. Investigation of Breach and Security Incidents: The Contractor shall immediately investigate such breach or security incident. As soon as the information is known and subject to the legitimate needs of law enforcement, Contractor shall inform the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer of:
1. what data elements were involved and the extent of the data disclosure or access involved in the breach, including, specifically, the number of individuals whose personal information was breached; and
  2. a description of the unauthorized persons known or reasonably believed to have improperly used the CDPH PCI and/or a description of the unauthorized persons known or reasonably believed to have improperly accessed or acquired the CDPH PCI, or to whom it is known or reasonably believed to have had the CDPH PCI improperly disclosed to them; and
  3. a description of where the CDPH PCI is believed to have been improperly used or disclosed; and

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4. a description of the probable and proximate causes of the breach or security incident; and
  5. whether Civil Code section 1798.29 or any other federal or state laws requiring individual notifications of breaches have been triggered.
- C. **Written Report:** The Contractor shall provide a written report of the investigation to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer as soon as practicable after the discovery of the breach or security incident. The report shall include, but not be limited to, the information specified above, as well as a complete, detailed corrective action plan, including information on measures that were taken to halt and/or contain the breach or security incident, and measures to be taken to prevent the recurrence or further disclosure of data regarding such breach or security incident.
- D. **Notification to Individuals:** If notification to individuals whose information was breached is required under state or federal law, and regardless of whether Contractor is considered only a custodian and/or non-owner of the CDPH PCI, Contractor shall, at its sole expense, and at the sole election of CDPH, either:
1. make notification to the individuals affected by the breach (including substitute notification), pursuant to the content and timeliness provisions of such applicable state or federal breach notice laws. Contractor shall inform the CDPH Privacy Officer of the time, manner and content of any such notifications, prior to the transmission of such notifications to the individuals; or
  2. cooperate with and assist CDPH in its notification (including substitute notification) to the individuals affected by the breach.
- E. **Submission of Sample Notification to Attorney General:** If notification to more than 500 individuals is required pursuant to California Civil Code section 1798.29, and regardless of whether Contractor is considered only a custodian and/or non-owner of the CDPH PCI, Contractor shall, at its sole expense, and at the sole election of CDPH, either:
1. electronically submit a single sample copy of the security breach notification, excluding any personally identifiable information, to the Attorney General pursuant to the format, content and timeliness provisions of Section 1798.29, subdivision (e). Contractor shall inform the CDPH Privacy Officer of the time, manner and content of any such submissions, prior to the transmission of such submissions to the Attorney General; or
  2. cooperate with and assist CDPH in its submission of a sample copy of the notification to the Attorney General.
- F. **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

**Exhibit F**
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to the contact information below by verbal or written notice to the Contractor. Said changes shall not require an amendment to this Exhibit or the agreement to which it is incorporated.

| <b>CDPH Program Contract Manager</b>                       | <b>CDPH Privacy Officer</b>  | <b>CDPH Chief Information Security Officer</b>   |
|--|--|--|
| See the Scope of Work exhibit for Program Contract Manager | Privacy Officer<br>Privacy Office<br>Office of Legal Services<br>California Dept. of Public Health<br>1415 L Street, 5 <sup>th</sup> Floor<br>Sacramento, CA 95814<br><br>Email: <a href="mailto:privacy@cdph.ca.gov">privacy@cdph.ca.gov</a><br>Telephone: (877) 421-9634 | Chief Information Security Officer<br>Information Security Office<br>California Dept. of Public Health<br>P.O. Box 997377<br>MS6302<br>Sacramento, CA 95899-7413<br><br>Email: <a href="mailto:cdphiso@cdph.ca.gov">cdphiso@cdph.ca.gov</a><br>Telephone: (855) 500-0016 |

- XII. Documentation of Disclosures for Requests for Accounting: Contractor shall document and make available to CDPH or (at the direction of CDPH) to an Individual such disclosures of CDPH PCI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of personal information as required by Civil Code section 1798.25, or any applicable state or federal law.
- XIII. Requests for CDPH PCI by Third Parties: The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDPH Program Contract Manager all requests for disclosure of any CDPH PCI requested by third parties to the agreement between Contractor and CDPH (except from an Individual for an accounting of disclosures of the individual's personal information pursuant to applicable state or federal law), unless prohibited from doing so by applicable state or federal law.
- XIV. Audits, Inspection and Enforcement CDPH may inspect the facilities, systems, books and records of Contractor to monitor compliance with this Exhibit. Contractor shall promptly remedy any violation of any provision of this Exhibit and shall certify the same to the CDPH Program Contract Manager in writing.
- XV. Return or Destruction of CDPH PCI on Expiration or Termination: Upon expiration or termination of the agreement between Contractor and CDPH for any reason, Contractor shall securely return or destroy the CDPH PCI. If return or destruction is not feasible, Contractor shall provide a written explanation to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer, using the contact information listed in Section XI(F), above.
- A. Retention Required by Law: If required by state or federal law, Contractor may retain, after expiration or termination, CDPH PCI for the time specified as necessary to comply with the law.
- B. Obligations Continue Until Return or Destruction: Contractor's obligations under this Exhibit shall continue until Contractor returns or destroys the CDPH PCI or returns the CDPH PCI to CDPH; provided however, that on expiration or termination of the agreement between

**Exhibit F**  
Information Privacy and Security Requirements  
(For Non-HIPAA/HITECH Act Contracts)

Contractor and CDPH, Contractor shall not further use or disclose the CDPH PCI except as required by state or federal law.

- C. **Notification of Election to Destroy CDPH PCI:** If Contractor elects to destroy the CDPH PCI, Contractor shall certify in writing, to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer, using the contact information listed in Section XI(F), above, that the CDPH PCI has been securely destroyed. The notice shall include the date and type of destruction method used.

XVI. **Amendment:** The parties acknowledge that federal and state laws regarding information security and privacy rapidly evolves and that amendment of this Exhibit may be required to provide for procedures to ensure compliance with such laws. The parties specifically agree to take such action as is necessary to implement new standards and requirements imposed by regulations and other applicable laws relating to the security or privacy of CDPH PCI. The parties agree to promptly enter into negotiations concerning an amendment to this Exhibit consistent with new standards and requirements imposed by applicable laws and regulations.

XVII. **Assistance in Litigation or Administrative Proceedings:** Contractor shall make itself and any subcontractors, workforce employees or agents assisting Contractor in the performance of its obligations under the agreement between Contractor and CDPH, available to CDPH at no cost to CDPH to testify as witnesses, in the event of litigation or administrative proceedings being commenced against CDPH, its director, officers or employees based upon claimed violation of laws relating to security and privacy, which involves inactions or actions by the Contractor, except where Contractor or its subcontractor, workforce employee or agent is a named adverse party.

XVIII. **No Third-Party Beneficiaries:** Nothing express or implied in the terms and conditions of this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than CDPH or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

XIX. **Interpretation:** The terms and conditions in this Exhibit shall be interpreted as broadly as necessary to implement and comply with regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of this Exhibit shall be resolved in favor of a meaning that complies and is consistent with federal and state laws and regulations.

XX. **Survival:** If Contractor does not return or destroy the CDPH PCI upon the completion or termination of the Agreement, the respective rights and obligations of Contractor under Sections VI, VII and XI of this Exhibit shall survive the completion or termination of the agreement between Contractor and CDPH.

## Exhibit F

### Information Privacy and Security Requirements (For Non-HIPAA/HITECH Act Contracts)

#### Attachment 1

#### Contractor Data Security Standards

##### 1. General Security Controls

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

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changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Must be at least eight characters. Must be a non-dictionary word. Must not be stored in readable format on the computer. Must be changed every 60 days. Must be changed if revealed or compromised. Must be composed of characters from at least three of the following four groups from the standard keyboard:

- Upper case letters (A-Z)
- Lower case letters (a-z)
- Arabic numerals (0-9)
- Non-alphanumeric characters (punctuation symbols)

J. **Data Sanitization.** All CDPH PCI must be sanitized using NIST Special Publication 800-88 standard methods for data sanitization when the CDPH PCI is no longer needed.

**2. System Security Controls**

- A. **System Timeout.** The system must provide an automatic timeout, requiring reauthentication of the user session after no more than 20 minutes of inactivity.
- B. **Warning Banners.** All systems containing CDPH PCI must display a warning banner each time a user attempts access, stating that data is confidential, systems are logged, and system use is for business purposes only. User must be directed to log off the system if they do not agree with these requirements.
- C. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for CDPH PCI, or which alters CDPH PCI. 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. This logging must be included for all user privilege levels including, but not limited to, systems administrators. If CDPH PCI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- D. **Access Controls.** The system must use role based access controls for all user authentications, enforcing the principle of least privilege.
- E. **Transmission encryption.** All data transmissions of CDPH PCI outside the contractor's secure internal network must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. Encryption can be end to end at the network level, or the data files containing CDPH PCI can be encrypted. This requirement pertains to any type of CDPH PCI in motion such as website access, file transfer, and E-Mail.
- F. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting CDPH PCI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

**3. Audit Controls**

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

#### **4. Business Continuity / Disaster Recovery Controls**

- A. **Disaster Recovery.** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic CDPH PCI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this agreement for more than 24 hours.
- B. **Data Backup Plan.** Contractor must have established documented procedures to securely backup CDPH PCI to maintain retrievable exact copies of CDPH PCI. The backups shall be encrypted. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and the amount of time to restore CDPH PCI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of CDPH data.

#### **5. Paper Document Controls**

- A. **Supervision of Data.** CDPH PCI 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 PCI 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 PCI is contained shall be escorted and CDPH PHI shall be kept out of sight while visitors are in the area.
- C. **Confidential Destruction.** CDPH PCI must be disposed of through confidential means, using NIST Special Publication 800-88 standard methods for data sanitization when the CDPH PSCI is no longer needed.
- D. **Removal of Data.** CDPH PCI must not be removed from the premises of the Contractor except with express written permission of CDPH.

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- E. **Faxing.** Faxes containing CDPH PCI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending.
- F. **Mailing.** CDPH PCI shall only be mailed using secure methods. Large volume mailings of CDPH PHI shall be by a secure, bonded courier with signature required on receipt. Disks and other transportable media sent through the mail must be encrypted with a CDPH approved solution, such as a solution using a vendor product specified on the CALIFORNIA STRATEGIC SOURCING INITIATIVE.

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**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 inconspicuous 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,

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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.

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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 them.

## 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

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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 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.

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- 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 § 180.940) 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 facts 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

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- E. 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

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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.

## 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.
  - ii. Meeting contract performance requirements; or
  - iii. 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 applies 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

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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.