



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

C-17

For the meeting of: March 7, 2017

Date: January 23, 2017

To: Board of Supervisors

From: Connie Beck, Director *LW*
Department of Health and Human Services – Public Health

Subject: State Standard Agreement with California Department of Public Health, Office of AIDS for HIV/AIDS Surveillance

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approve State Standard Agreement number 16-10770 with California Department of Public Health (CDPH), Office of AIDS for \$38,313 for the period of July 1, 2016 through June 30, 2019;
2. Direct the Chair of the Board to sign four (4) originals of the cover page of the Agreement, the CCC-307 Contractor Certification, and Darfur Contracting Act;
3. Direct the Clerk of the Board to return the four (4) signed originals and Certifications to Department of Health and Human Services (DHHS) – Contract Unit for submission to Public Health.
4. Direct the Clerk of the Board to return one (1) copy of the Board Order to DHHS – Contract Unit for submission to DHHS-Public Health.

SOURCE OF FUNDING:

Public Health Fund

Prepared by Lara Zintsmaster, Administrative Analyst

CAO Approval *[Signature]*

REVIEW:

Auditor *[Signature]*

County Counsel

Human Resources *[Signature]*

Other

TYPE OF ITEM:

- ☒ Consent
☐ Departmental
☐ Public Hearing
☐ Other

PREVIOUS ACTION/REFERRAL:

Board Order No. C-13, C-14

Meeting of: 3/1/11, 8/13/13

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor *Fennell* Seconded by Supervisor *Wilson*

Ayes *Sundberg, Fennell, Bass, Bohn, Wilson*
Nays
Abstain
Absent

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: Mar 7, 2017

By: *[Signature]*
Kathy Hayes, Clerk of the Board

DISCUSSION:

California Department of Public Health (CDPH) office of AIDS has contracted with Humboldt County DHHS – Public Health since the late 1980's to provide HIV/AIDS services in Humboldt County. The goal of the HIV/AIDS Surveillance Program is to establish and enhance active and passive HIV/AIDS case surveillance in health and social service settings. Goals include improving the timeliness, accuracy and reliability of the local HIV/AIDS case data; investigating reported HIV/AIDS cases in order to establish an accurate mode of HIV transmission; and in conjunction with CDPH, Office of AIDS staff, conducting investigations of cases of public health importance.

This agreement number 16-10770 before your Board today will allow DHHS – Public Health to be reimbursed for a maximum of \$38,313 for surveillance activities performed within the period beginning July 1, 2016 through June 30, 2019.

This item is coming to your Board after the effective date because it was not issued by CDPH until late January.

FINANCIAL IMPACT:

Approval of State Standard Agreement 16-10770 with CDPH allows DHHS – Public Health to be reimbursed for a total of \$38,313 over the term July 1, 2016 through June 30, 2019 for the HIV/AIDS Surveillance Program in Fund 1175, Budget Unit 419, TB Control. This funding was included in the county approved budget for FY 2016-17 and will be included in county budget process for FY 2017-18 and FY 2018-19. There will be no net increase or decrease to the county General Fund.

The proposed agreement supports the Board's Strategic Framework by protecting vulnerable populations and providing community-appropriate levels of service.

OTHER AGENCY INVOLVEMENT:

N/A

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose not to approve the agreement from CDPH, however it is not recommended as DHHS – Public Health would not be reimbursed for the HIV/AIDS Surveillance program if state funds are not accepted.

ATTACHMENTS:

Attachment A: Four (4) originals of Standard Agreement 16-10770

Attachment B: One (1) original copy of the contractor certification clause CCC-307

Attachment C: One (1) original copy of the Darfur Contracting Act

REGISTRATION NUMBER

AGREEMENT NUMBER

16-10770

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

STATE AGENCY'S NAME

(Also referred to as CDPH or the State)

California Department of Public Health

CONTRACTOR'S NAME

(Also referred to as Contractor)

County of Humboldt

2. The term of this Agreement is: 07/01/16 through 06/30/19

3. The maximum amount of this Agreement is: \$ 38,313
Thirty Eight Thousand Three Hundred Thirteen Dollars

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

Exhibit A – Scope of Work	7 pages
Exhibit B – Budget Detail and Payment Provisions	3 pages
Exhibit B, Attachment I – Budget	1 page
Exhibit C * – General Terms and Conditions	GTC 610
Exhibit D – Special Terms and Conditions	16 pages
Exhibit E – Additional Provisions	2 pages
Exhibit F – Information Privacy and Security Requirements	11 pages
Exhibit G – CA. Enhanced HIV/AIDS Case Reporting System Data Use & Disclosure Agmt.	18 pages
Exhibit H – HIV/AIDS Confidentiality Agreement	1 page
Exhibit I – Contractor's Release	1 page

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

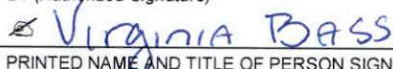
IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

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

County of Humboldt

BY (Authorized Signature)



DATE SIGNED (Do not type)

3/2/17

PRINTED NAME AND TITLE OF PERSON SIGNING

Virginia Bass, Chair of the Board of Supervisors

ADDRESS

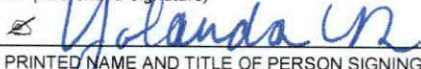
529 I Street
Eureka, CA 95501

STATE OF CALIFORNIA

AGENCY NAME

California Department of Public Health

BY (Authorized Signature)



DATE SIGNED (Do not type)

3/21/17

PRINTED NAME AND TITLE OF PERSON SIGNING

Yolanda Murillo, Chief, Contracts Management Unit

ADDRESS

1616 Capitol Avenue, Suite 74.317, MS 1802, PO Box 997377
Sacramento, CA 95899-7377

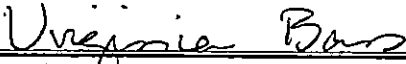
California Department of
General Services Use Only

☒ Exempt per: OA Budget Act 2016

CCC-307

CERTIFICATION

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

<i>Contractor/Bidder Firm Name (Printed)</i> County of Humboldt		<i>Federal ID Number</i> 94-0000513
<i>By (Authorized Signature)</i> 		
<i>Printed Name and Title of Person Signing</i> Virginia Bass, Chair, Board of Supervisors		
<i>Date Executed</i> 3/7/17	<i>Executed in the County of</i> Humboldt	

CONTRACTOR CERTIFICATION CLAUSES

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

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

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

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

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

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

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

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

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

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

6. SWEATFREE CODE OF CONDUCT:

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

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

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

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

DOING BUSINESS WITH THE STATE OF CALIFORNIA

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

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

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

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

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

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

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

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

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

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

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

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

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

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

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

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

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

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

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

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

Darfur Contracting Act

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

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

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

OR

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

OR

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

CERTIFICATION

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

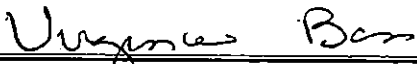
Company Name (Printed) County of Humboldt		Federal ID Number 94-0000513
By (Authorized Signature) 		
Printed Name and Title of Person Signing Virginia Bass, Chair, Board of Supervisors		
Date Executed 3/7/17	Executed in the County and State of Humboldt, California	

Exhibit A
Scope of Work

1. Service Overview

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

The Contractor agrees to administer the HIV Surveillance Program (HSP) and to insure the implementation of Human Immunodeficiency Virus (HIV) surveillance activities as described in this Scope of Work (SOW). The Contractor will plan, develop, and implement all aspects of HIV surveillance in the Service Location.

The Legislature authorized in the Health & Safety Code (HSC) Section 131019 the CDPH, Office of AIDS (OA) as the lead agency within the State responsible for coordinating state programs, services and activities related to HIV and Acquired Immune Deficiency Syndrome (AIDS). HSC 131085 (a) and (b) authorize the CDPH to enter into contracts to perform public health activities.

2. Service Location

The services shall be performed at applicable facilities in the County of Humboldt.

3. Service Hours

The services shall be provided during regular business hours, Monday through Friday, except official holidays.

4. Project Representatives

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

California Department of Public Health Kimberly Ferreira, Assistant Chief Telephone: (916) 449-5262 Fax: (916) 449-5858 E-mail: kimberly.ferreira@cdph.ca.gov	County of Humboldt Eric Gordon, Public Health Nurse Telephone: (707) 268-2174 Fax: (707) 445-6091 E-mail: egordon@co.humboldt.ca.us
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B. Direct all inquiries to:

California Department of Public Health Surveillance Research & Evaluation Branch Kimberly Ferreira, Assistant Chief 1616 Capitol Avenue, Suite 616, MS 7700 Sacramento, CA, 95899-7426 Telephone: (916) 449-5262 Fax: (916) 449-5858 E-mail: kimberly.ferreira@cdph.ca.gov	County of Humboldt Eric Gordon, Public Health Nurse 529 I Street Eureka, CA 95501 Telephone: (707) 268-2174 Fax: (707) 445-6091 E-mail: egordon@co.humboldt.ca.us
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C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.

Exhibit A
Scope of Work

5. Services to be Performed

Services performed shall be consistent with the OA Guide to HIV Surveillance (<https://www.cdph.ca.gov/programs/aids/Pages/SurvProcedures.aspx>), a comprehensive guide that also includes the standard operating procedures (SOPs), and be performed in support of the goals of California's Integrated HIV Surveillance, Prevention, and Care Plan and the National HIV/AIDS Strategy (NHAS).

Contractor shall perform the activities outlined below:

A. Maintain Infrastructure for HIV Surveillance

The goal under this agreement regarding maintaining infrastructure for HIV surveillance is to establish and maintain HIV case surveillance in health, medical, public health, and social service settings, including laboratories and HIV testing sites such that HIV case reporting to the local health department occurs in a timely and complete fashion.

- 1) Contractor shall identify all sites responsible for HIV case reporting under California Health and Safety Code section 120130 and 121022, Title 17, California Code of Regulations (CCR) § 2641 and Title 17 CCR § 2643 in the jurisdiction, including, but not limited to, medical offices, clinics, hospitals, testing sites, community-based organizations, correctional health care settings, and clinical laboratories.
- 2) Contractor shall evaluate HIV case reporting procedures at HIV reporting sites (see Guide for HIV Surveillance for specific criteria) to insure all case information is reported per California Health and Safety Code section 120130 and 121022, Title 17 CCR § 2641 and Title -17 CCR § 2643, and OA Guide to HIV Surveillance. Provide education and technical assistance to sites as needed to improve site-specific processes for HIV reporting.
- 3) Contractor shall identify, obtain, and maintain access to all data sources within the jurisdiction containing information relevant to HIV case surveillance including, but not limited to: clinic and hospital medical records, vital records, sexually transmitted disease (STD) surveillance data, Ryan White program data, tuberculosis (TB) surveillance data, and HIV and STD partner services data. These data sources may include California Reportable Disease Information Exchange (CaREDIE), AIDS Regional Information and Evaluation System (ARIES), and Local Evaluation Online (LEO).

B. Collect and Submit Accurate, Complete, and Timely HIV Surveillance Data to OA

The goal under this agreement regarding collecting accurate and complete HIV surveillance data is to collect HIV surveillance data that meets all data requirements set forth by the OA and the Centers for Disease Control and Prevention (CDC), and submit data to OA as per the OA Guide to HIV Surveillance.

- 1) Contractor shall identify all new HIV and new HIV stage 3 AIDS cases (including previously reported HIV cases that have transitioned to HIV stage 3 AIDS) reported in the jurisdiction through routine monitoring of laboratory and provider reports, and electronic laboratory data.

Exhibit A
Scope of Work

- 2) Contractor shall determine whether newly identified HIV and HIV Stage 3 AIDS cases are new cases by conducting 'case checks' on all potentially new cases against local and state HIV surveillance data.
- 3) Contractor shall assign a unique identifier ("STATENO") to each newly identified HIV case using the list of STATENOs provided by OA.
- 4) Contractor shall complete an Adult or Pediatric Case Report Form for 100 percent of newly reported HIV cases and 100 percent of new HIV Stage 3 AIDS cases identified in the jurisdiction and submit those case report forms to the OA within 45 days of the Contractor receiving notification of a new case [as per HSC Section 121023 and California Code of Regulations, Title 17 § 2643.15].
- 5) Contractor shall collect all required data elements on 100 percent of Adult and Pediatric Case Report Forms using all available data sources to the extent permitted by law including, but not limited to, data from medical providers, HIV test sites, laboratories, HIV prevention programs, Ryan White funded programs, STD surveillance programs, and STD and HIV partner services programs. Required data elements are stated in OA Guide to HIV Surveillance and include, but are not limited to, demographic information, contact information, risk behavior, clinical information, and testing and treatment history. OA shall provide an annual report to the contractor on the completeness of required data elements in order to facilitate identification of data and program gaps.
- 6) Contractor shall enter 100 percent of non-electronic laboratory results received into the Lab Data Entry Tool (LDET) or equivalent system, and submit the lab results to the OA within 90 days of specimen collection date. OA shall provide a quarterly report to the Contractor summarizing performance on this item.
- 7) Contractor shall import 100 percent of electronic laboratory record (ELR) data files received from OA into LDET or equivalent system within 5 business days of receipt.
- 8) Contractor shall review and investigate cases and data quality issues identified on monthly OA quality assurance/quality control reports. Contractor shall make appropriate data corrections or updates through processes specified in the Guide to HIV Surveillance within 90 days of receipt of the reports.
- 9) Contractor shall collaborate with OA and CDC staff to conduct investigations of Cases of Public Health Importance (COPHI) [cases with unusual or highly concerning clinical or exposure characteristics, including but not limited to workplace exposure, etc.]. COPHI case investigations shall be completed within 3 months of the Contractor receiving notification of the case from OA.
- 10) Contractor shall submit an export of lab data from LDET to OA at least twice per month.
- 11) Contractor shall proactively identify technical assistance and training needs regarding HIV surveillance and inform the OA of those needs. Contractor shall collaborate with OA to receive technical assistance and training as determined by OA.

Exhibit A
Scope of Work

C. Maintain Data Security and Confidentiality

The goal under this agreement regarding data security and confidentiality is to protect patient privacy and confidentiality by ensuring that protected health information is stored and disclosed only in a manner consistent with California and federal laws and regulations, and OA policies and procedures.

- 1) Contractor shall maintain a secure HIV surveillance work area where all electronic and paper HIV surveillance data are stored. Access to the work area shall be restricted to local health department staff that (a) are authorized by the Local HIV Surveillance Coordinator to access HIV-related data, (b) have completed annual HIV surveillance data security and confidentiality training, and (c) annually signed the "HIV/AIDS Confidentiality Agreement" form (Exhibit H).
- 2) Contractor shall provide a copy of all signed Exhibit H forms to OA at the time of hire and annually by April 30th of each year.
- 3) Contractor shall maintain an updated list of all persons with access to the HIV surveillance work area. The list shall include the most recent date the annual training was completed and the date the most recent CDPH 8689 form was signed. The list shall be made available to OA on request.
- 4) Contractor shall facilitate local health department disease investigation and HIV/STD prevention and care staff access to HIV surveillance data by proactively identifying which staff should complete the required training and sign the confidentiality agreement. These individuals shall be included on the list specified in section C.3.
- 5) Contractor shall maintain information technology (IT) security for IT systems containing HIV surveillance data in a manner consistent with the Guide to HIV Surveillance.
- 6) Contractor shall annually complete, by April 30th of each year, the Periodic Checklist for HIV Data Security and Confidentiality from the OA Guide to HIV Surveillance. The Periodic Checklist shall be submitted to OA upon completion.
- 7) Contractor shall submit a report on any deficiencies identified on the Periodic Checklist within 30 days of receiving notice from OA of the deficiency. The report shall contain items out of compliance, describe the action steps for remediating the deficiency, and a timeline for those action steps to be completed. Contractor shall consult with OA to identify and implement action steps.
- 8) Contractor shall insure all local HIV surveillance staff adhere to all components of the data security and confidentiality guidance in the OA Guide to HIV Surveillance and trainings. This includes, but is not limited to, locking up all paper or electronic materials when not in use, shredding documents for disposal using an approved cross-cut shredder, adhering to the locally-approved document retention schedule, submitting paper and electronic records to OA in an approved and secure manner, and verifying the identity and authority of a caller to receive information that is being shared over the phone.

Exhibit A
Scope of Work

- 9) Contractor shall not release HIV surveillance data to unauthorized persons that could lead to the identification of an individual diagnosed with HIV. This includes using appropriate methods for suppressing small cell sizes in published reports and tables; for an example, see the CDPH/OA Internal Guidelines for Working with Small Cell Sizes (<https://www.cdph.ca.gov/programs/aids/Documents/SmallCellGuidance.pdf>).
- 10) Contractor shall not release HIV surveillance data of any type directly to the CDC, unless specifically directed to do so by OA.

D. Program Management and Coordination

The goal under this agreement regarding program management and coordination is to conduct HIV surveillance activities in a manner consistent with administrative, fiscal, budgetary, and program guidance from CDPH, OA, and CDC.

- 1) Contractor shall designate a Local HIV Surveillance Coordinator for the jurisdiction that is responsible for: 1) overseeing and implementing this contract and meeting the objectives in this SOW; 2) receiving and responding to communications with OA; 3) informing other local HIV surveillance staff and local health department leadership of program changes and communications from OA; 4) ensuring that contract monitoring and invoice submission occurs; 5) completing and submitting required reports; 6) attending OA-required conferences and trainings, including monthly all-county calls; and 7) maintaining local data security and confidentiality.
- 2) Contractor shall communicate the name and contact information of the Local HIV Surveillance Coordinator to OA on an annual basis at the start of the contract year and within 10 business days of any change in the name or contact information for the Local HIV Surveillance Coordinator.
- 3) Contractor shall submit invoices related to HIV surveillance activities outlined in this SOW to OA on a quarterly basis.
- 4) The Local HIV Surveillance Coordinator, or their designee, will participate in all OA-convened HIV surveillance meetings and conference calls, including, but not limited to, monthly all-county calls and OA-led training sessions.

E. Collaborate With Partners to Respond to the HIV Epidemic

The goal of this agreement regarding collaborating with partners is to facilitate sharing data and resources to support progress toward meeting California's Integrated Plan goals and objectives.

- 1) Contractor shall provide local health department HIV prevention and disease investigation staff with all available information, including but not limited to patient name, contact information, diagnosing provider, regarding persons newly diagnosed with HIV within 5 business days of the Contractor receiving notification of the case in order to facilitate linkage to care and partner services for persons newly diagnosed with HIV. Contractor shall provide additional necessary information to local health department HIV prevention and care programs as it becomes available.

Exhibit A
Scope of Work

- 2) Contractor shall provide local health department HIV prevention and disease investigation staff with all available information including but not limited to patient name, contact information, diagnosing provider, regarding cases of acute HIV infection within 1 business day of the Contractor receiving notification of the case. Contractor shall provide additional necessary information to local health department HIV prevention and care programs as it becomes available.
- 3) Contractor shall share locally generated, or OA generated lists of HIV cases that are out of care with local health department HIV prevention and care programs on a monthly basis at a minimum to insure that local health department HIV prevention and care staff are able to follow-up on these cases and reconnect patients to care.
- 4) Contractor shall obtain updated case contact, risk behavior, provider, or clinical information from local health department HIV prevention and care program investigations of persons who are out of care and update HIV surveillance data with this information using the method specified by OA in the Guide to HIV Surveillance.
- 5) Contractors are encouraged to analyze HIV surveillance data, including data shared under Data Use Agreements, to support local program planning, implementation, and monitoring.
- 6) Contractors shall support the California Medical Monitoring Project (MMP) by sharing HIV surveillance data with OA MMP staff upon request, and facilitating communications between OA MMP staff, and local medical providers and correctional facilities.

F. Optional Activity: Receive HIV Surveillance Data from the OA

The goal of this optional activity is to permit OA to provide detailed data files containing identifiable information on people living with HIV (PLWH) in the Contractor's jurisdiction generated from the statewide HIV surveillance system.

- 1) Because these data files are provided by OA, and can include data collected by other local health jurisdictions, Contractors electing to receive these data files shall commit to meeting the requirements in the "CALIFORNIA ENHANCED HIV/AIDS CASE REPORTING SYSTEM DATA USE AND DISCLOSURE AGREEMENT" (see Exhibit G).
- 2) Contractors who to sign and submit the Agreement shall receive data files in a secure method specified by the Guide to HIV Surveillance.

6. Scope of Work Changes

Pursuant to Health and Safety Code Section 38077 (b)(2), changes and revisions to the Scope of Work contained in the agreement, utilizing the "**allowable cost payment system**", may be proposed by the Contractor in writing. All requested changes and revisions are subject to the approval of the State. Failure to notify the State of proposed revisions to the Scope of Work may result in an audit finding.

- 1) The State will respond, in writing, as to the approval or disapproval of all such requests for changes or revisions to the Scope of Work within 30 calendar days of the date the request is received in the program. Should the State fail to respond to the Contractor's request within 30 calendar days of receipt, the Contractor's request shall be deemed approved.

Exhibit A
Scope of Work

- 2) The State may also request changes and revisions to the Scope of Work. The State will make a good-faith effort to provide the Contractor 30 calendar days advance written notice of said changes or revisions.

No changes to the Scope of Work agreed to pursuant to this provision shall take effect until the cooperative agreements are amended and the amendment is approved as required by law and 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 specified in Attachment I, of this Exhibit.
- C. Invoices shall include the Agreement Number and shall be submitted not more frequently than monthly in arrears. Each invoice for the quarter shall be submitted for payment no more than thirty (30) calendar days following the close of each quarter, unless an alternate deadline is agreed to in writing by the program contract manager. Direct all inquiries to:

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

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

E. Amounts Payable

The amounts payable under this agreement shall not exceed:

- 1) \$12,771 for the budget period of 07/01/16 through 06/30/17.
- 2) \$12,771 for the budget period of 07/01/17 through 06/30/18.
- 3) \$12,771 for the budget period of 07/01/18 through 06/30/19.

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.

Exhibit B
Budget Detail and Payment Provisions

- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

3. Prompt Payment Clause

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

4. Timely Submission of Final Invoice

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

5. Allowable Line Item Shifts

- A. Subject to the prior review and approval of the State, line item shifts of up to fifteen percent (15%) of the annual contract total, not to exceed a maximum of one hundred thousand (\$100,000) annually are allowed, so long as the annual agreement total neither increases nor decreases.
- B. The \$100,000 maximum limit shall be assessed annually and automatically adjusted by the State in accordance with cost-of-living indexes. Said adjustments shall not require a formal agreement amendment. The State shall annually inform the Contractor in writing of the adjusted maximum.
- C. Line item shifts meeting this criteria shall not require a formal agreement amendment.
- D. The Contractor shall adhere to State requirements regarding the process requesting approval to line item shifts.
- E. Line item shifts may be proposed/requested by either the State or the Contractor.

6. 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.

Exhibit B
Budget Detail and Payment Provisions

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

7. Recovery of Overpayments

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

8. 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.

County of Humboldt
16-10770

*Fringe Benefit percentage is based on employer contributions that include FICA, medical, worker's compensation, short and long term disability, and retirement rates.

Operating Expenses

1. Facilities – Rent
2. General Office Supplies – Pens, Paper, Post-it notes
3. Equipment Rental & Purchases – Rentals (copy machines, large printers) Purchases (computers, laptops, tablets, cell phones)
4. Telecommunications – County Electronic Network System, Internet Provider, Cell Phone Provider, Landline Telephone System)
5. Media/Promotions– Development & Purchasing Materials (brochures, fliers) and Advertising (banners, ads)
6. Travel and Per Diem (Conferences, Trainings, Meetings)

Other Costs (Subcontractors and Consultants)

Subcontractor(s):

Exhibit D
Special Terms and Conditions
(Rev 6/16)

(For Cooperative Agreement in accordance with HSC 38070)

The provisions herein apply to this Agreement unless the provisions are removed by reference, the provisions are superseded by an alternate provision appearing elsewhere in this Agreement, or the applicable conditions do not exist.

Index of Special Terms and Conditions

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Exhibit D
Special Terms and Conditions

1. Procurement Rules

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

a. Equipment definitions

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

(1) **Major equipment/property:** A tangible or intangible item having a base unit cost of \$5,000 or more with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.

(2) **Minor equipment/property:** A tangible item having a base unit cost of less than \$5,000 with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this Agreement.

b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this Agreement. Said procurements are subject to Paragraphs d through g of this provision. Paragraph c of this provision shall also apply, if equipment purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.

c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this Agreement.

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

To secure equipment above the annual maximum limit of \$50,000, the Contractor shall make arrangements through the appropriate CDPH Program Contract Manager, to have all remaining equipment purchased through CDPH's Purchasing Unit. The cost of equipment purchased by or through CDPH shall be deducted from the funds available in this Agreement. Contractor shall submit to the CDPH Program Contract Manager a list of equipment specifications for those items that the State must procure. The State may pay the vendor directly for such arranged equipment purchases and title to the equipment will remain with CDPH. The equipment will be delivered to the Contractor's address, as stated on the face of the Agreement, unless the Contractor notifies the CDPH Program Contract Manager, in writing, of an alternate delivery address.

(2) All equipment purchases are subject to paragraphs d through g of this provision. Paragraph b of this provision shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.

(3) Nonprofit organizations and commercial businesses, shall use a procurement system that meets the following standards:

(a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee,

Exhibit D
Special Terms and Conditions

- officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
- (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
 - (c) Procurements shall be conducted in a manner that provides for all of the following:
 - [1] Avoid purchasing unnecessary or duplicate items.
 - [2] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
 - [3] Take positive steps to utilize small and veteran owned businesses.
 - d. Unless waived or otherwise stipulated in writing by CDPH, prior written authorization from the appropriate CDPH Program Contract Manager will be required before the Contractor will be reimbursed for any purchase **exceeding** \$5,000 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by CDPH, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
 - e. In special circumstances, determined by CDPH (e.g., when CDPH has a need to monitor certain purchases, etc.), CDPH may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. CDPH reserves the right to either deny claims for reimbursement or to request repayment for any Contractor purchase that CDPH determines to be unnecessary in carrying out performance under this Agreement.
 - f. The Contractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor at any time.
 - g. For all purchases, the Contractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor for inspection or audit.

2. Equipment Ownership / Inventory / Disposition

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

- a. Wherever the terms equipment and/or property are used in this provision, the definitions in provision 1, paragraph a., shall apply.

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

Exhibit D
Special Terms and Conditions

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

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

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

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

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

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

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

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

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

- f. Within sixty (60) calendar days prior to the termination or end of this Agreement, the Contractor

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Special Terms and Conditions

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

g. Motor Vehicles

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

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

Automobile Liability Insurance

- (a) The Contractor, by signing this Agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, to the Contractor.
- (b) The Contractor shall, as soon as practical, furnish a copy of the certificate of insurance to the CDPH Program Contract Manager. The certificate of insurance shall identify the CDPH contract or agreement number for which the insurance applies.
- (c) The Contractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this Agreement or until such time as the motor vehicle is returned to CDPH.

Exhibit D
Special Terms and Conditions

- (d) The Contractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this Agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.
- (e) The Contractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:
 - [1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State.
 - [2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this Agreement and any extension or continuation of this Agreement.
 - [3] The insurance carrier shall notify CDPH, in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to each agreement number for which the insurance was obtained.
- (f) The Contractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by CDPH, in writing, if this provision is applicable to this Agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.
- (g) In the event the Contractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, CDPH may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

3. Subcontract Requirements

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

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services exceeding \$5,000 for any articles, supplies, equipment, or services. The Contractor shall obtain at least three competitive quotations which should be submitted or adequate justification provided for the absence of bidding.
- b. CDPH reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.
 - (1) Upon receipt of a written notice from CDPH requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by CDPH.

Exhibit D
Special Terms and Conditions

- c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) exceeding \$5,000 are subject to the prior review and written approval of CDPH.
- d. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by CDPH, make copies available for approval, inspection, or audit.
- e. CDPH assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.
- f. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.
- g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement and shall be the subcontractor's sole point of contact for all matters related to the performance and payment during the term of this Agreement.
- h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from CDPH to the Contractor, to permit CDPH or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."

4. Income Restrictions

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

5. Site Inspection

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

6. Intellectual Property Rights

a. Ownership

Exhibit D
Special Terms and Conditions

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

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Special Terms and Conditions

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

c. Copyright

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Paragraph a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to CDPH to any work product made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.
- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement, shall include CDPH's notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2014, etc.], Department of Public Health. This material may not be reproduced or disseminated without prior written permission from the Department of Public Health." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Third-Party Intellectual Property

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

Exhibit D
Special Terms and Conditions

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.

e. Warranties

(1) Contractor represents and warrants that:

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

(2) CDPH MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

f. 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

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

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

g. Survival

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

7. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior CDPH approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this Agreement and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this Agreement in any media. This provision does

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not apply to necessary staff meetings or training sessions held for the staff of the Contractor in order to conduct routine business matters.

8. Confidentiality of Information

The Contractor and its employees, agents, or subcontractors shall:

- a. 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. Not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
- c. Promptly transmit to the CDPH Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.
- d. 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 Contract Manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.
- f. As deemed applicable by CDPH, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

9. Documents, Publications and Written Reports

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

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

10. Dispute Resolution Process

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

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Special Terms and Conditions

- (1) The Contractor should first informally discuss the problem with the CDPH Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
- (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.
- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Division 2, Chapter 2, Article 3 (commencing with Section 1140) of the California Code of Regulations).
- c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the Agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.
- d. Unless otherwise stipulated in writing by CDPH, all dispute, grievance and/or appeal correspondence shall be directed to the CDPH Contract Manager.
- e. There are organizational differences within CDPH's funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDPH 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.

11. Officials Not to Benefit

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

12. Prohibited Use of State Funds for Software

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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.

13. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

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

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

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- (2) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Provision f (3)(b) for an example.
- (3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) Example No. 1:

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

(b) Example No. 2:

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

(c) Example No. 3:

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

14. Cancellation

- A. This agreement may be cancelled by CDPH without cause upon 30 calendar days advance written notice to the Contractor.
- B. CDPH reserves the right to cancel or terminate this agreement immediately for cause. The Contractor may submit a written request to terminate this agreement only if CDPH substantially fails to perform its responsibilities as provided herein.
- C. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this agreement.
- D. Agreement termination or cancellation shall be effective as of the date indicated in CDPH's notification to the Contractor. The notice shall stipulate any final performance, invoicing or payment requirements.

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- E. Upon receipt of a notice of termination or cancellation, 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.

Exhibit E
Additional Provisions

1. 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.

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Additional Provisions

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.

- 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.
- 5) Environmental/Pollution Liability (when required) – Contractor shall maintain pollution liability for limits not less than \$1,000,000 per claim covering Contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site as well as transportation and proper disposal of hazardous materials. 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.
- 6) Aircraft Liability (when required) - Contractor shall maintain aircraft liability with a limit not less than \$3,000,000. 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." This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.

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.
 - C. Disclosure: "Disclosure" means the release, transfer, provision of, access to, or divulging in any manner of information outside the entity holding the information.

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- 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.
- 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

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

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.
- 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 a 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
 4. a description of the probable and proximate causes of the breach or security incident; and

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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 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.

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CDPH Program Contract Manager	CDPH Privacy Officer	CDPH Chief Information Security Officer
See the Scope of Work exhibit for Program Contract Manager	Privacy Officer Privacy Office Office of Legal Services California Dept. of Public Health 1415 L Street, 5 th Floor Sacramento, CA 95814 Email: privacy@cdph.ca.gov Telephone: (877) 421-9634	Chief Information Security Officer Information Security Office California Dept. of Public Health P.O. Box 997377 MS6302 Sacramento, CA 95899-7413 Email: cdphiso@cdph.ca.gov 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 Contractor and CDPH, Contractor shall not further use or disclose the CDPH PCI except as required by state or federal law.

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- 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.

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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 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

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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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- 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.
- 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

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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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**CALIFORNIA ENHANCED HIV/AIDS CASE REPORTING SYSTEM
DATA USE AND DISCLOSURE AGREEMENT**

This California HIV/AIDS Case Reporting System Data Use And Disclosure Agreement (hereinafter referred to as "Agreement") sets forth the information privacy and security requirements that County of Amador (hereinafter "Data Recipient") is obligated to follow with respect to all HIV/AIDS Case Reporting System data, and other personal and confidential information, (as each of these types of data and information are defined herein), disclosed to Data Recipient by the California Department of Public Health (CDPH) (such Enhanced HIV/AIDS Case Reporting System [eHARS] data and other personal and confidential information are also referred to herein collectively as "Protected Data"). This Agreement covers Protected Data in any medium (paper, electronic, oral) the Protected Data exist in. By entering into this Agreement, CDPH and Data Recipient desire to protect the privacy and provide for the security of all Protected Data in compliance with all state and federal laws applicable to the Protected Data. Permission to receive and use Protected Data requires execution of this Agreement that describes the terms, conditions and limitations of Data Recipient's use of the Protected Data.

- I. Supersession: This Agreement supersedes Agreement Number _____, dated _____, between CDPH and Data Recipient.
- II. Definitions: For purposes of this Agreement, the following definitions shall apply:
 - A. Breach: "Breach" means:
 1. The acquisition, access, use, or disclosure of Protected Data, in any medium (paper, electronic, oral), in violation of any state or federal law or in a manner not permitted under this Agreement, that compromises the privacy, security, or integrity of the information. For purposes of this definition, "compromises the privacy, security or integrity of the information" means to pose a significant risk of financial, reputational, or other harm to an individual or individuals; or
 2. The same as the definition of "breach of the security of the system" set forth in California Civil Code Section 1798.29(d).
 - 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, subdivision (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. Meets the definition of "confidential public health record" set forth in California Health and Safety Code Section 121035, subdivision (c); or
 3. Is contained in documents, files, folders, books, or records that are clearly labeled, marked, or designated with the word "confidential" by CDPH.
 - C. Disclosure: "Disclosure" means the release, transfer, provision of, access to, or divulging in any other manner of information. "Disclosure" includes the disclosure, release, transfer, dissemination, or communication of all or any part of any confidential research record orally, in

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writing, or by electronic means to any person or entity, or providing the means for obtaining the records (California Health and Safety Code Sections 121035 and 121125).

- D. eHARS Data: "eHARS data" means data in or from the central registry maintained by CDPH of demographic, clinical, HIV risk behavior, vital status, health facility, and administrative information on all reported HIV infections and AIDS diagnoses in California, known as eHARS. "eHARS data" specifically includes all information contained in or extracted from the following:

1. The CDPH HIV/AIDS Confidential Case Report Form, Adult (CDPH 8641A);
2. The CDPH HIV/AIDS Confidential Case Report Pediatric Form (CDPH 8641P);
3. Birth certificate document;
4. Death document;
5. Laboratory document;
6. Pre-test document;
7. Post-test document; or
8. Administrative data (document identification, system dates) from eHARS.

- E. Personal Information: "Personal Information" means information that:

1. By itself, directly identifies, or uniquely describes an individual; or
2. Creates a substantial risk that it 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, subdivisions (e)(1), (2) or (3); or
5. Meets the definition of "medical information" set forth in either California Civil Code section 1798.29, subdivision (f)(2) or California Civil Code section 56.05, subdivision (g); or
6. Meets the definition of "health insurance information" set forth in California Civil Code section 1798.29, subdivision (f)(3).

- F. Protected Data: "Protected Data" means data that consists of one or more of the following types of information:

1. "eHARS Data", as defined above; or

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2. "Confidential Information", as defined above.

3. "Personal Information", as defined above; or

G. Security Incident: "Security Incident" means:

1. An attempted breach; or

2. The attempted or successful modification or destruction of Protected Data, in violation of any state or federal law or in a manner not permitted under this Agreement; or

3. The attempted or successful modification or destruction of, or interference with, Data Recipient's system operations in an information technology system, that negatively impacts the confidentiality, availability or integrity of Protected Data, or hinders or makes impossible Data Recipient's receipt, collection, creation, storage, transmission or use of Protected Data by Data Recipient pursuant to this Agreement.

H. Use: "Use" means the sharing, employment, application, utilization, examination, or analysis of information.

III. Background and Purpose: The CDPH, Office of AIDS (OA) is designated by the California Health and Safety Code Section 131019 as the lead agency for coordinating state programs, services, and activities relating to HIV/AIDS. The primary mission of OA is to assess, prevent, and interrupt the transmission of HIV and to provide for the needs of infected Californians by identifying the scope and extent of HIV infection, providing for the needs which it creates, and disseminating timely and complete information. OA is responsible for oversight of HIV/AIDS case reporting in California and as such, maintains eHARS, a confidential, central registry of demographic and clinical information on all reported HIV infections and AIDS diagnoses in California. Case counts generated by this reporting system are used to inform funding allocations for such programs and activities as the Ryan White Program, Federal Centers for Disease Control and Prevention (CDC) prevention, and surveillance. The Health Resources and Services Administration uses HIV and AIDS case counts to determine Ryan White funding levels. Through Ryan White, California receives funding for a wide variety of health care and support services, which identify and coordinate efforts to assist California's most vulnerable HIV-positive populations. eHARS collects data to support HIV/AIDS surveillance according to CDC standards. Thus, the system is designed to collect, organize, manage, store, and retrieve data CDC has identified as necessary to conduct HIV/AIDS case surveillance statewide.

The purpose of this Agreement is to permit exchange of eHARS information between California's local health jurisdictions and CDPH. This exchange is necessitated by California Code of Regulations (Title 17, Sections 2502, 2505, and 2641.5 through 2643.20), which dictates that case report information from laboratories and health care providers is reportable to the local health officer who thereafter reports this information to CDPH (a decentralized system). California's decentralized eHARS thus facilitates local as well as CDPH access to eHARS data to facilitate local care, prevention, and surveillance activity, including local application to Federal Ryan White Part A funds and locally tailored prevention services.

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IV. Legal Authority for Disclosure and Use of Protected Data: The legal authority for CDPH to collect, use, and disclose Protected Data, and for Data Recipient to receive and use Protected Data is as follows:

A. General Legal Authority:

List of Reportable Diseases and Conditions:

1. California Health and Safety Code Section 120130 provides in part as follows: "The department shall establish a list of reportable diseases and conditions. For each reportable disease and condition, the department shall specify the timeliness of requirements related to the reporting of each disease and condition, and the mechanisms required for, and the content to be included in, reports made pursuant to this section. The list of reportable diseases and conditions may include both communicable and noncommunicable diseases. Those diseases listed as reportable shall be properly reported as required to the department by the health officer"
2. Title 17, California Code of Regulations, Section 2500, subdivision (g), provides in part as follows: "Upon the State Department of Public Health's request, a local health department shall provide to the department the information reported pursuant to this section"

B. California HIV/AIDS-Specific Legal Authority:

1. Disclosure Permitted for Public Health Purposes: California Health and Safety Code Section 121025, subdivision (a) provides as follows: "Public health records relating to [HIV/AIDS], containing personally identifying information, that were developed or acquired by state or local public health agencies, or an agent of such an agency, shall be confidential and shall not be disclosed, except as otherwise provided by law for public health purposes"
2. Disclosure Permitted to Carry Out the Investigation, Control, or Surveillance Duties of CDPH and Data Recipient: California Health and Safety Code Section 121025, subdivision (b), provides as follows: "In accordance with subdivision (g) of Section 121022, a state or local public health agency, or an agent of such an agency, may disclose personally identifying information in public health records . . . to other local, state, or federal public health agencies . . . when the confidential information is necessary to carry out the duties of the agency . . . in the investigation, control, or surveillance of disease, as determined by the state or local public health agency."
3. Further Disclosure Permitted For Public Health Purposes: California Health and Safety Code Section 121025, subdivision (c) provides as follows: "Except as provided in paragraphs (1) to (3), inclusive, any disclosure authorized by subdivision (a) or (b) shall include only the information necessary for the purpose of that disclosure and shall be made only upon agreement that the information will be kept confidential and will not be further disclosed without written authorization, as described in subdivision (a). . . ."

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4. Only Minimum Necessary Disclosure Permitted: California Health and Safety Code Section 121025, subdivision (c), provides as follows: "Any disclosure authorized . . . shall include only the information necessary for the purpose of that disclosure"
5. Agreement Required: California Health and Safety Code Section 121025, subdivision (c), provides as follows: "[Disclosure] shall be made only upon agreement that the information will be kept confidential and will not be further disclosed without written authorization [by the subject of the information]"
6. No Liability for HIV/AIDS Reporting: California Health and Safety Code Section 120980, subdivision (i), provides an exemption from liability for disclosure of HIV/AIDS reporting: "Nothing in this section imposes liability or criminal sanction for disclosure of an HIV test, as defined in subdivision (c) of Section 120775, in accordance with any reporting requirement for a case of HIV infection, including AIDS by the [California Department of Public Health]"
7. AIDS Reporting: Title 17, California Code of Regulations, Section 2502, subdivision (b), provides in part as follows: Individual Case and Outbreak Reports: For the diseases listed below, the local health officer shall prepare and send to the Department along with the summary report described in (a) above an individual case or outbreak report for each individual case/outbreak of those diseases which the Department has identified as requiring epidemiological analysis reported pursuant to Section 2500. At the discretion of the director, the required individual case/outbreak report may be either a Confidential Morbidity Report (PM-110 1/90), its electronic equivalent or a hard copy 8.5 x 11 inch individual case/outbreak report form. The Weekly Morbidity by Place of Report form (DHS 8245 11/95) indicates which format to use. Each individual case report shall include the following: 1) verification of information reported pursuant to Section 2500; 2) information on the probable source of infection, if known; 3) laboratory or radiologic findings, if any; 4) clinical signs and/or symptoms, if applicable; and 5) any known epidemiological risk factors . . . "An individual case report is required for the following diseases: Acquired Immune Deficiency Syndrome (AIDS). . ."
8. HIV Infection Reporting:
 - a. California Health and Safety Code Section 121022, subdivision (a) provides: "To ensure knowledge of current trends in the HIV epidemic and to assure that California remains competitive for federal HIV and AIDS funding, health care providers and laboratories shall report cases of HIV infection to the local health officer using patient names. Local health officers shall report unduplicated HIV cases by name to the [California Department of Public Health]."
 - b. California Health and Safety Code Section 121022, subdivision (f) provides: "State and local health department employees and contractors shall be required to sign confidentiality agreements developed by the department that include information related to the penalties for a breach of confidentiality, and the procedures for reporting a breach of confidentiality"

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- c. California Health and Safety Code Section 121023, subdivision (a) provides: "Subject to subdivision (b), each clinical laboratory, as defined in Section 1206 of the Business and Professions Code, shall report all CD4+ T-Cell Test results to the local health officer for the local health jurisdiction where the health care provider facility is located within seven days of the completion of the CD4+ T-Cell test. . . ."
 - d. Title 17, California Code of Regulations, Section 2643.15, provides in part as follows: "The local health officer or his or her authorized designee shall match and unduplicate laboratory reports of confirmed HIV tests with the local health department HIV/AIDS registry database and with HIV/AIDS case reports received from health care providers and not entered into the database. The health officer or his or her authorized designee shall, within 45 calendar days of receipt of a laboratory report of a confirmed HIV test, submit unduplicated HIV/AIDS case reports to the Department."
- C. Health Insurance Portability and Accountability Act (HIPAA) Authority:
- 1. CDPH HIPAA Status: CDPH is a "hybrid entity" for purposes of applicability of the federal regulations entitled, "Standards for Privacy of Individually Identifiable Health Information," ("Privacy Rule") (Title 45, Code of Federal Regulations, Parts 160, 162, and 164) promulgated pursuant to HIPAA (Title 42, United States Code, Sections 1320d - 1320d-8). All of the CDPH programs that collect, use, or disclose Protected Data have been designated by CDPH as HIPAA-covered "health care components" of CDPH. (Title 45, Code of Federal Regulations, Section 164.504(c)(3)(iii).)
 - 2. Parties Are "Public Health Authorities: CDPH and Data Recipient are each a "public health authority" as that term is defined in the Privacy Rule. (Title 45, Code of Federal Regulations, Sections 164.501 and 164.512(b)(1)(i).)
 - 3. Protected Data Use and Disclosure Permitted by HIPAA: To the extent a disclosure or use of Protected Data is a disclosure or use of "Protected Health Information" (PHI) of an individual, as that term is defined in Section 160.103 of Title 45, Code of Federal Regulations, the following Privacy Rule provisions apply to permit such Protected Data disclosure and/or use by CDPH and Data Recipient, without the consent or authorization of the individual who is the subject of the PHI:
 - a. The HIPAA Privacy Rule creates a special rule for a subset of public health disclosures whereby HIPAA cannot preempt state law if, "[t]he provision of state law, including state procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention." (Title 45, Code of Federal Regulations, Section 160.203(c).) [NOTE: See Sections IV.A and IV.B, above.];
 - b. A covered entity may disclose PHI to a "public health authority" carrying out public health activities authorized by law; (Title 45, Code of Federal Regulations, Section 164.512(b).); and

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- c. Other, non-public health-specific provisions of HIPAA may also provide the legal basis for all or specific Protected Data uses and disclosures.
- V. Disclosure Restrictions: The Data Recipient, and its employees or agents, shall protect from unauthorized disclosure any Protected Data. The Data Recipient shall not disclose, except as otherwise specifically permitted by this Agreement, any Protected Data to anyone other than CDPH, except if disclosure is allowed or required by state or federal law.
- VI. Use Restrictions: The Data Recipient, and its employees or agents, shall not use any Protected Data for any purpose other than carrying out the Data Recipient's obligations under the statutes and regulations set forth in Section IV, above, or as otherwise allowed or required by state or federal law.
- VII. Safeguards: Data Recipient shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the privacy, confidentiality, security, integrity, and availability of Protected Data, including electronic or computerized Protected Data. The Data Recipient 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 Data Recipient's operations and the nature and scope of its activities in performing its legal obligations and duties (including performance of its duties and obligations under this Agreement), and which incorporates the requirements of Section VIII, Security, below. Data Recipient shall provide CDPH with Data Recipient's current and updated policies.
- VIII. Security: The Data Recipient shall take all steps necessary to ensure the continuous security of all computerized data systems containing Protected Data. These steps shall include, at a minimum:
 - A. Complying with all of the data system security precautions listed in the Data Recipient Data Security Standards set forth in Attachment A to this Agreement;
 - B. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget (OMB) in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and

In case of a conflict between any of the security standards contained in any of the aforementioned sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to Protected Data from breaches and security incidents.
- IX. Security Officer: The Data Recipient shall designate a Security Officer to oversee its compliance with this Agreement and for communicating with CDPH on matters concerning this Agreement.
- X. Training: The Data Recipient shall provide training on its obligations under this Agreement, at its own expense, to all of its employees who assist in the performance of Data Recipient's obligations under this Agreement, or otherwise use or disclose Protected Data.
 - A. The Data Recipient shall require each employee who receives training to sign a certification, indicating the employee's name and the date on which the training was completed.

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- B. The Data Recipient shall retain each employee's written certifications for CDPH inspection for a period of three years following contract termination.
- XI. Employee Discipline: Data Recipient shall discipline such employees and other Data Recipient workforce members who intentionally violate any provisions of this Agreement, including, if warranted, by termination of employment.
- XII. Employee/Contractor Security and Confidentiality Agreement: Prior to accessing protected data, Data Recipient employees and contractors will sign CDPH's confidentiality agreement, provide signed copies of these agreements to CDPH and review these agreements annually as required by law (See Attachment B, "Agreement by Employee/Contractor to Comply with Confidentiality Requirements" (CDPH 8689)).
- XIII. Breach and Security Incident Responsibilities:
- A. Notification to CDPH of Breach or Security Incident: The Data Recipient shall notify CDPH **immediately by telephone call plus e-mail or fax** upon the discovery of a breach (as defined in this Agreement), **or within 24 hours by e-mail or fax** of the discovery of any security incident (as defined in this Agreement). Notification shall be provided to the CDPH Program Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer, using the contact information listed in Section XII (E), below. If the breach or security incident occurs after business hours or on a weekend or holiday and involves Protected Data in electronic or computerized form, notification to CDPH shall be provided by calling the CDPH Information Technology Service Desk at the telephone numbers listed in Section XII (E), below. For purposes of this section, breaches and security incidents shall be treated as discovered by Data Recipient as of the first day on which such breach or security incident is known to the Data Recipient, or, by exercising reasonable diligence would have been known to the Data Recipient. Data Recipient shall be deemed to have knowledge of a breach or security incident if such breach or security incident is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach or security incident, who is an employee or agent of the Data Recipient.
- Data Recipient 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: The Data Recipient shall immediately investigate such breach or security incident, and within 72 hours of the discovery, shall inform the CDPH Program Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer of:

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1. What data elements were involved and the extent of the data 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 Protected Data and/or a description of the unauthorized persons known or reasonably believed to have improperly accessed or acquired the Protected Data, or to whom it is known or reasonably believed to have had the Protected Data improperly disclosed to them; and
 3. A description of where the Protected Data is believed to have been improperly used or disclosed; and
 4. A description of the probable causes of the breach or security incident; and
 5. Whether California Civil Code Section 1798.29 or any other federal or state laws requiring individual notifications of breaches have been triggered.
- C. Written Report: The Data Recipient shall provide a written report of the investigation to the CDPH Program Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer within five working days of 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 full, 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 of 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 Data Recipient is considered only a custodian and/or non-owner of the Protected Data, Data Recipient 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 of laws. The CDPH Privacy Officer shall approve 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. CDPH Contact Information: To direct communications to the above referenced CDPH staff, the Data Recipient shall initiate contact as indicated herein. CDPH reserves the right to make changes to the contact information below by giving written notice to the Data Recipient. Said changes shall not require an amendment to this Agreement.

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CDPH Program Manager	CDPH Privacy Officer	CDPH Chief Information Security Officer (and CDPH IT Service Desk)
Juliana Grant, Surveillance, Research and Evaluation Branch Chief Office of AIDS, CDPH, MS 7700, P.O. Box 997426 Sacramento, CA 95899-7426 Juliana.Grant@cdph.ca.gov Telephone: (916) 341-7016 Fax: (916) 449-5861	Privacy Officer Privacy Office, Office of Legal Services, CDPH 1415 L Street, Suite 600 Sacramento, CA 95814 privacy@cdph.ca.gov Telephone: (877) 421-9634	Chief Information Security Officer Information Security Office, CDPH, MS 6302 P.O. Box 997377 Sacramento, CA 95899-7377 cdphiso@cdph.ca.gov Telephone: IT Service Desk (916) 440-7000 or (800) 579-0874

- XIV. Indemnification: Data Recipient shall indemnify, hold harmless and defend CDPH from and against any and all claims, losses, liabilities, damages, costs and other expenses (including attorneys fees) that result from or arise directly or indirectly out of or in connection with any negligent act or omission or willful misconduct of Data Recipient, its officers, employees or agents relative to the Protected Data, including without limitation, any violations of Data Recipient's responsibilities under this Agreement.
- XV. Term of Agreement: This Agreement shall remain in effect for three years after the latest signature date in the signature block below. After three years, this Agreement will expire without further action. If the parties wish to extend this Agreement, they may do so by reviewing, updating, and reauthorizing this Agreement. The newly signed agreement should explicitly supersede this Agreement, which should be referenced by Agreement Number and date in Section I of the new Agreement. If one or both of the parties wish to terminate this Agreement prematurely, they may do so upon 30 days advanced notice. CDPH may also terminate this Agreement pursuant to Section XV or XVII, below.
- XVI. Termination for Cause:
- A. Termination Upon Breach: A breach by Data Recipient of any provision of this Agreement, as determined by CDPH, shall constitute a material breach of the Agreement and grounds for immediate termination of the Agreement by CDPH. At its sole discretion, CDPH may give Data Recipient 30 days to cure the breach.
- B. Judicial or Administrative Proceedings: Data Recipient will notify CDPH if it is named as a defendant in a criminal proceeding related to a violation of this Agreement. CDPH may terminate the Agreement if Data Recipient is found guilty of a criminal violation related to a violation of this Agreement. CDPH may terminate the Agreement if a finding or stipulation that the Data Recipient has violated any security or privacy laws is made in any administrative or civil proceeding in which the Data Recipient is a party or has been joined.
- XVII. Return or Destruction of Protected Data on Expiration or Termination: On expiration or termination of the agreement between Data Recipient and CDPH for any reason, Data Recipient shall return or destroy the Protected Data. If return or destruction is not feasible, Data Recipient shall explain to

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CDPH why, in writing, to the CDPH Program Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer, using the contact information listed in Section XIII (E), above.

- A. Retention Required by Law: If required by state or federal law, Data Recipient may retain, after expiration or termination, Protected Data for the time specified as necessary to comply with the law.
- B. Obligations Continue Until Return or Destruction: Data Recipient's obligations under this Agreement shall continue until Data Recipient destroys the Protected Data or returns the Protected Data to CDPH; provided however, that on expiration or termination of the Agreement, Data Recipient shall not further use or disclose the Protected Data except as required by state or federal law.
- C. Notification of Election to Destroy Protected Data: If Data Recipient elects to destroy the Protected Data, Data Recipient shall certify in writing, to the CDPH Program Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer, using the contact information listed in Section XIII (E), above, that the Protected Data has been destroyed.

XVIII. Amendment: The parties acknowledge that federal and state laws relating to information security and privacy are rapidly evolving and that amendment of this Agreement 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 Protected Data. Upon CDPH request, Data Recipient agrees to promptly enter into negotiations with CDPH concerning an amendment to this Agreement embodying written assurances consistent with new standards and requirements imposed by regulations and other applicable laws. CDPH may terminate this Agreement upon 30-days written notice in the event:

- A. Data Recipient does not promptly enter into negotiations to amend this Agreement when requested by CDPH pursuant to this section; or
- B. Data Recipient does not enter into an amendment providing assurances regarding the safeguarding of Protected Data that CDPH in its sole discretion deems sufficient to satisfy the standards and requirements of applicable laws and regulations relating to the security or privacy of Protected Data.

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

XX. Disclaimer: CDPH makes no warranty or representation that compliance by Data Recipient with this Agreement will be adequate or satisfactory for Data Recipient's own purposes or that any information in Data Recipient's possession or control, or transmitted or received by Data Recipient, is or will be

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secure from unauthorized use or disclosure. Data Recipient is solely responsible for all decisions made by Data Recipient regarding the safeguarding of Protected Data.

- XXI. Transfer of Rights: Data Recipient has no right and shall not subcontract, delegate, assign, or otherwise transfer or delegate any of its rights or obligations under this Agreement to any other person or entity. Any such transfer of rights shall be null and void.
- XXII. No Third-Party Beneficiaries: Nothing expressed or implied in the terms and conditions of this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CDPH or Data Recipient and their respective successors or assignees, any rights, remedies, obligations or liabilities, whatsoever.
- XXIII. Interpretation: The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with regulations and applicable State and Federal laws. The parties agree that any ambiguity in the terms and conditions of this Agreement shall be resolved in favor of a meaning that complies and is consistent with federal and state laws.
- XXIV. Survival: The respective rights and obligations of Data Recipient under Sections VII, VIII and XII of this Agreement shall survive the termination or expiration of this Agreement.
- XXV. Entire Agreement: This Agreement constitutes the entire agreement between CDPH and Data Recipient. Any and all modifications of this Agreement must be in writing and signed by all parties. Any oral representations or agreements between the parties shall be of no force or effect.
- XXVI. Severability: The invalidity in whole or in part of any provisions of this Agreement shall not void or affect the validity of any other provisions of this Agreement.
- XXVII. Signatures:

IN WITNESS, WHEREOF, the Parties have executed this Agreement as follows:

On behalf of the Data Recipient, [insert name of LHO, LHD or other recipient of data] , the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to abide by and enforce all the terms specified herein.

(Name of Representative of [insert name of LHO, LHD or other recipient of data])

(Title)

(Signature)

(Date)

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On behalf of CDPH, the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein.

(Name of CDPH Representative)

(Title)

(Signature)

(Date)

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Attachment A
Data Recipient Data Security Standards

1. General Security Controls

- a. **Confidentiality Statement.** All persons that will be working with Protected Data 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 Protected Data. The statement must be renewed annually. The Data Recipient shall retain each person's written confidentiality statement for CDPH inspection for a period of three years following contract termination.
- b. **Background check.** Before a member of the Data Recipient's workforce may access Protected Data, Data Recipient 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 Data Recipient shall retain each workforce member's background check documentation for a period of three years following contract termination.
- c. **Workstation/Laptop encryption.** All workstations and laptops that process and/or store Protected Data 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 Protected Data 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 Protected Data required to perform necessary business functions may be copied, downloaded, or exported.
- f. **Removable media devices.** All electronic files that contain Protected Data must be encrypted when stored on any removable media or portable device (i.e., USB thumb drives, floppies, CD/DVD, Blackberry, back-up tapes, etc.). Must be encrypted using a FIPS 140-2 certified algorithm, such as AES, with a 128bit key or higher.
- g. **Antivirus software.** All workstations, laptops, and other systems that process and/or store Protected Data 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 Protected Data must have 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.

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- i. **User IDs and Password Controls.** All users must be issued a unique user name for accessing Protected Data. Username must be promptly disabled, deleted, or the

password changed upon the transfer or termination of an employee with knowledge of the password. Passwords: are not to be shared; must be at least eight characters; must be a non-dictionary word; must not be stored in readable format on the computer; must be changed every 60 days; must be changed if revealed or compromised and 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); and
- Non-alphanumeric characters (punctuation symbols).

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

2. System Security Controls

- a. **System Timeout.** The system must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- b. **Warning Banners.** All systems containing Protected Data must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only. User must be directed to log off the system if they do not agree with these requirements.
- c. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for Protected Data, or which alters Protected Data. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If Protected Data is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least three 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 Protected Data outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm, such as AES, with a 128bit key or higher. Encryption can be end to end at the network level, or the data files containing Protected Data can be encrypted. This requirement pertains to any type of Protected Data in motion such as website access, file transfer, and e-mail.
- f. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting Protected Data that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

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3. Audit Controls

- a. **System Security Review.** All systems processing and/or storing Protected Data 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 Protected Data must have a routine procedure in place to review system logs for unauthorized access.
- c. **Change Control.** All systems processing and/or storing Protected Data 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.** Data Recipient must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic Protected Data 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.** Data Recipient must have established documented procedures to back-up Protected Data to maintain retrievable exact copies of Protected Data. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of back-up media, and the amount of time to restore Protected Data 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.** Protected Data 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. Protected Data in paper form shall not be left unattended at any time in vehicles, planes, trains, or any other modes of transportation and shall not be checked in baggage on commercial airplanes.
- b. **Escorting Visitors.** Visitors to areas where Protected Data is contained shall be escorted and CDPH PHI shall be kept out of sight while visitors are in the area.
- c. **Confidential Destruction.** Protected Data 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.

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- d. **Removal of Data.** Protected Data must not be removed from the premises of the Data Recipient except with express written permission of CDPH.
- e. **Faxing.** Faxes containing Protected Data 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.** Protected Data 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 CSSI.

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**CALIFORNIA ENHANCED HIV/AIDS CASE REPORTING SYSTEM
DATA USE AND DISCLOSURE AGREEMENT****Attachment B****Agreement by Employee/Contractor to Comply with Confidentiality Requirements***Summary of Statutes Pertaining to Confidential Public Health Records and Penalties for Disclosure*

All HIV/AIDS case reports and any information collected or maintained in the course of surveillance-related activities that may directly or indirectly identify an individual are considered *confidential public health record(s)* under California Health and Safety Code (HSC), Section 121035(c) and must be handled with the utmost confidentiality. Furthermore, HSC §121025(a) prohibits the disclosure of HIV/AIDS-related public health records that contain any personally identifying information to any third party, unless authorized by law for public health purposes, or by the written consent of the individual identified in the record or his/her guardian/conservator. Except as permitted by law, any person who negligently discloses information contained in a confidential public health record to a third party is subject to a civil penalty of up to \$5,000 plus court costs, as provided in HSC §121025(e)(1). Any person who willfully or maliciously discloses the content of a public health record, except as authorized by law, is subject to a civil penalty of \$5,000-\$25,000 plus court costs as provided by HSC §121025(e)(2). Any willful, malicious, or negligent disclosure of information contained in a public health record in violation of state law that results in economic, bodily, or psychological harm to the person named in the record is a misdemeanor, punishable by imprisonment for a period of up to one year and/or a fine of up to \$25,000 plus court costs (HSC §121025(e)(3)). Any person who is guilty of a confidentiality infringement of the foregoing type may be sued by the injured party and shall be personally liable for all actual damages incurred for economic, bodily, or psychological harm as a result of the breach (HSC §121025(e)(4)). Each disclosure in violation of California law is a separate, actionable offense (HSC §121025(e)(5)).

Because an assurance of case confidentiality is the foremost concern of the California Department of Public Health, Office of AIDS (CDPH/OA), any actual or potential breach of confidentiality shall be immediately reported. In the event of any suspected breach, staff shall immediately notify the director or supervisor of the local health department's HIV/AIDS surveillance unit who in turn shall notify the CDPH/OA Surveillance Section Chief or designee. CDPH/OA, in conjunction with the local health department and the local health officer shall promptly investigate the suspected breach. Any evidence of an actual breach shall be reported to the law enforcement agency that has jurisdiction.

Employee Confidentiality Pledge

I recognize that in carrying out my assigned duties, I may obtain access to private information about persons diagnosed with HIV or AIDS that was provided under an assurance of confidentiality. I understand that I am prohibited from disclosing or otherwise releasing any personally identifying information, either directly or indirectly, about any individual named in any HIV/AIDS confidential public health record. Should I be responsible for any breach of confidentiality, I understand that civil and/or criminal penalties may be brought against me. I acknowledge that my responsibility to ensure the privacy of protected health information contained in any electronic records, paper documents, or verbal communications to which I may gain access shall not expire, even after my employment or affiliation with the Department has terminated.

By my signature, I acknowledge that I have read, understand, and agree to comply with the terms and conditions above.

Employee name (print)	Employee Signature	Date
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Supervisor name (print)	Supervisor Signature	Date
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Name of Employer

PLEASE RETAIN A COPY OF THIS DOCUMENT FOR YOUR RECORDS.

Exhibit H
HIV/AIDS Confidentiality Agreement

Summary of Statutes Pertaining to Confidential Public Health Records and Penalties for Disclosure

All HIV/AIDS case reports and any information collected or maintained in the course of surveillance-related activities that may directly or indirectly identify an individual are considered *confidential public health record(s)* under California Health and Safety Code (HSC) Section 121035(c) and must be handled with the utmost confidentiality. Furthermore, HSC §121025(a) prohibits the disclosure of HIV/AIDS-related public health records that contain any personally identifying information to any third party, unless authorized by law for public health purposes, or by the written consent of the individual identified in the record or his/her guardian/conservator. Except as permitted by law, any person who negligently discloses information contained in a confidential public health record to a third party is subject to a civil penalty of up to \$2,500 plus court costs, as provided in HSC §121025(e)(1). Any person who willfully or maliciously discloses the content of a public health record, except as authorized by law, is subject to a civil penalty of \$5,000-\$10,000 plus court costs as provided by HSC §121025(e)(2). Any willful, malicious, or negligent disclosure of information contained in a public health record in violation of state law that results in economic, bodily, or psychological harm to the person named in the record is a misdemeanor, punishable by imprisonment for a period of up to one year and/or a fine of up to \$25,000 plus court costs (HSC §121025(e)(3)). Any person who is guilty of a confidentiality infringement of the foregoing type may be sued by the injured party and shall be personally liable for all actual damages incurred for economic, bodily, or psychological harm as a result of the breach (HSC §121025(e)(4)). Each disclosure in violation of California law is a separate, actionable offense (HSC §121025(e)(5)).

Because an assurance of case confidentiality is the foremost concern of the California Department of Health Services, Office of AIDS (OA), any actual or potential breach of confidentiality shall be immediately reported. In the event of any suspected breach, staff shall immediately notify the director or supervisor of the local health department's HIV/AIDS surveillance unit who in turn shall notify the Chief of the HIV/AIDS Case Registry Section or designee. OA, in conjunction with the local health department and the local health officer shall promptly investigate the suspected breach. Any evidence of an actual breach shall be reported to the law enforcement agency that has jurisdiction.

Employee Confidentiality Pledge

I recognize that in carrying out my assigned duties, I may obtain access to private information about persons diagnosed with HIV or AIDS that was provided under an assurance of confidentiality. I understand that I am prohibited from disclosing or otherwise releasing any personally identifying information, either directly or indirectly, about any individual named in any HIV/AIDS confidential public health record. Should I be responsible for any breach of confidentiality, I understand that civil and/or criminal penalties may be brought against me. I acknowledge that my responsibility to ensure the privacy of protected health information contained in any electronic records, paper documents, or verbal communications to which I may gain access shall not expire, even after my employment or affiliation with the Department has terminated.

By my signature, I acknowledge that I have read, understand, and agree to comply with the terms and conditions of this Confidentiality Agreement.

_____ Employee name (printed)	_____ Employee signature	_____ Date
_____ Supervisor name (printed)	_____ Supervisor signature	_____ Date
_____ Chief name (printed) HIV/AIDS Case Registry Section Office of AIDS California Department of Health Services	_____ Chief signature	_____ Date

Contractor's Release

Instructions to Contractor:

With final invoice(s) submit one (1) original and one (1) copy. The original must bear the original signature of a person authorized to bind the Contractor. The additional copy may bear photocopied signatures.

Submission of Final Invoice

Pursuant to contract number 16-10770 entered into between the State of California Department of Public Health (CDPH) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via invoice number(s) _____, in the amount(s) of \$ _____ and dated _____. If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that a minimum of 0% unless otherwise specified in writing of post consumer material, as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether it meets the requirements of Public Contract Code Section 12209. Contractor specifies that printer or duplication cartridges offered or sold to the State comply with the requirements of Section 12156(e).

Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by CDPH or purchased with or reimbursed by contract funds)

Unless CDPH has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another CDPH agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to CDPH, at CDPH's expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING TO THE FINAL INVOICE

Contractor's Legal Name (as on contract): County of Humboldt

Signature of Contractor or Official Designee: _____ Date: _____

Printed Name/Title of Person Signing: _____

CDPH Distribution: Accounting (Original) Program