

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

20-10917

PURCHASING AUTHORITY NUMBER (If Applicable)

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

CONTRACTING AGENCY NAME

California Department of Public Health

CONTRACTOR NAME

Logistics Health Inc.

2. The term of this Agreement is:

START DATE

1/22/2021

THROUGH END DATE

4/30/2021

3. The maximum amount of this Agreement is:

\$45,000,000.00

Forty Five Million Dollars and Zero Cents

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

Exhibits	Title	Pages
Exhibit A	Scope of Work	2
	Attachment 1 OptumServe Proposal	14
Exhibit B	Budget Detail & Provisions	3
+ - Exhibit C	General Terms & Conditions	6
+ - Exhibit D	Special Terms & Conditions	7
+ - Exhibit E	FEMA Provisions	5
+ - Exhibit F	HIPAA	14

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

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

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

**CONTRACTOR**

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

Logistics Health Inc.

CONTRACTOR BUSINESS ADDRESS

328 Front Street South

CITY

La Crosse

STATE

WI

ZIP

54601

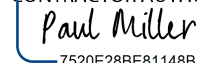
PRINTED NAME OF PERSON SIGNING

Paul Miller

TITLE

CFO

CONTRACTOR AUTHORIZED SIGNATURE



DATE SIGNED

2/3/2021

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES  
**STANDARD AGREEMENT**  
STD 213 (Rev. 04/2020)

AGREEMENT NUMBER 20-10917	PURCHASING AUTHORITY NUMBER (If Applicable)
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STATE OF CALIFORNIA

CONTRACTING AGENCY NAME California Department of Public Health			
CONTRACTING AGENCY ADDRESS 1615 Capitol Ave	CITY Sacramento	STATE CA	ZIP 95814
PRINTED NAME OF PERSON SIGNING Tim Bow	TITLE Procurement Officer		
CONTRACTING AGENCY AUTHORIZED SIGNATURE	DATE SIGNED		
CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL	EXEMPTION (If Applicable) PCC 1102 Executive Order N-25-20-COVID19		

**Exhibit A**  
**Scope of Work****1. Service Overview**

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

Refer to Attachment 1 of this exhibit for service overview.

**2. Service Location**

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

**3. Service Hours**

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

**4. Project Representatives**

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

<b>California Department of Public Health</b> Ellen Badley Telephone: (916) 449-5452 Mobile: (916) 340-5824 E-mail: Ellen.Badley@cdph.ca.gov	<b>Logistics Health Inc.</b> Derek de la Noche Telephone: (703) 712-5661 Fax: N/A E-mail: ddnoche@optum.com
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B. Direct all inquiries to:

<b>California Department of Health Care Services</b>  Nick Picinich 1501 Capitol Avenue Sacramento, CA 95814  Telephone: (916) 345-7473 Fax: N/A E-mail: Nick.Picinich@dhcs.ca.gov	<b>Logistics Health Inc.</b>  Attention: Derek de la Noche 328 Front Street South La Crosse, WI 54601  Telephone: (703) 712-5661 Fax: N/A E-mail: ddnoche@optum.com
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C. All payments from CDPH to the Contractor; shall be sent to the following address:

<p align="center"><b>Remittance Address</b></p> <p>Contractor: [Logistics Health Inc.]  </p> <p>Attention "Cashier": Derek de la Noche</p> <p>328 Front Street South</p> <p>La Crosse, WI 54601</p>
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**Exhibit A**  
**Scope of Work**

703-712-5661
ddnoche@optum.com

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

**5. Services to be Performed**

- Refer to Attachment 1 of this exhibit for details on services to be performed
- The 20 Optum sites listed in Attachment 1 may be modified / changed to any other Optum collection sites as mutual agreement between Contractor and the State

## Proposal For California Department of Public Health



# COVID-19 Vaccination Services and Support

## Proposal and Pricing

### Date

January 26, 2021

### Point of Contact

Derek dela Noche  
Vice President, Contracts

### Email

ddnoche@optum.com

### Phone

(703) 203-0567

### Address

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

### Fax

(608) 783-7352

#### *Use and Disclosure of Data*

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate this proposal. However, if a contract is awarded to this offeror as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in these data if they are obtained from another source without restriction. This proposal contains proprietary LHI information.

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## 1. Introduction

### 1.1. Purpose

Immunization with a safe and effective COVID-19 vaccine is a critical tool to reduce COVID-19-related illnesses, hospitalizations, and deaths and to help restore societal functioning. To support a safe, equitable and transparent rollout of the COVID-19 vaccine, California Department of Public Health (CDPH) seeks an experienced contractor to provide end-to-end vaccination services. To ensure California quickly and effectively increase vaccine administration throughput, it is vital to augment the well-established healthcare infrastructure with alternative, high throughput vaccination events. CDPH can begin increasing capacity rapidly by leveraging existing partners to help achieve California's goal to *Vaccinate all 58*, providing COVID-19 vaccine for everyone in California who wants it.

### 1.2. Executive Summary

OptumServe, which includes Logistics Health, Inc. (LHI), is the federal health services business of UnitedHealth Group. We are a leading, Fortune 7 health and well-being company serving more than 139 million individuals and operating in all 50 U.S. states, the District of Columbia, most U.S. territories, and more than 140 countries worldwide. UnitedHealth Group offers some of the nation's largest health care networks and health care delivery systems, with nearly 1.4 million credentialed physicians and other health care providers, and 6,500 hospitals and other facilities.

**In 2020, OptumServe provided COVID testing services to over 3 million US residents across 20 states at 1,340 different sites. We have been performing end to end COVID testing services for the State of California since April 27, 2020 across 90+ sites, executing over 2.1 million tests to date.**

OptumServe brings together the vast resources and health care expertise of UnitedHealth Group's unique health services along with the innovation and technology capabilities of Optum. With decades of experience and capabilities in health policy research and consulting, health IT, data and analytics, health care operations, military and Veteran health services, and population health management, OptumServe is proud to help federal agencies deliver their mission and improve the health and well-being of those we collectively serve.

With nearly two decades of experience deploying medical testing and immunization events nationwide for public and private sector clients, OptumServe was ready to respond when the pandemic began. Since executing our first testing event in April 2020, OptumServe has collected over 3.1 million COVID-19 tests nationwide, with 2.1 million COVID-19 tests performed in the State of California through our existing partnership with CDPH. Since August, OptumServe has been preparing for the natural transition and/or augmentation of existing testing sites to administer COVID-19 vaccine once available. We are prepared to serve CDPH and the residents of California with equitable distribution and administration of the COVID-19 vaccine.

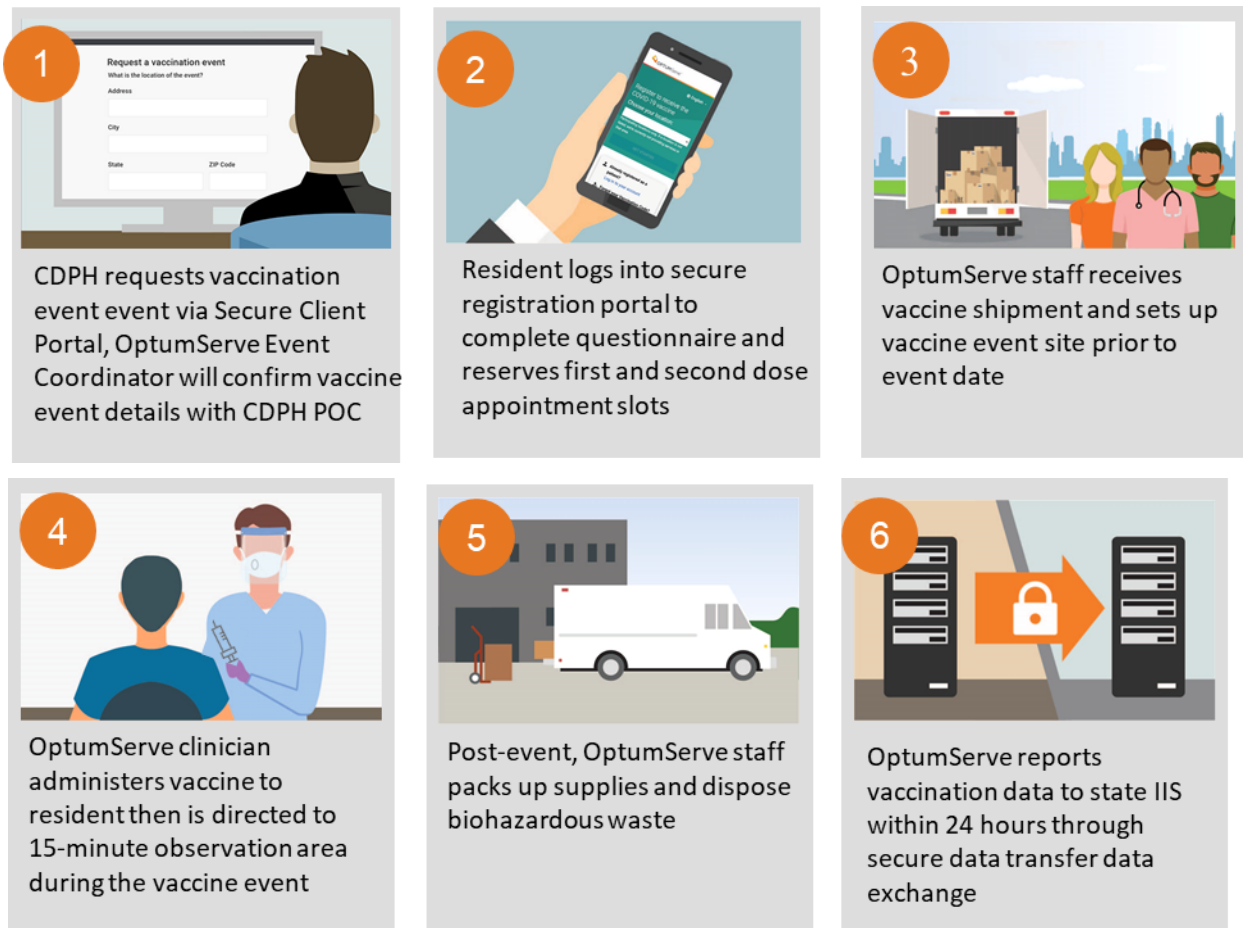
## 2. Scope of Work

OptumServe will provide end-to-end COVID-19 vaccination administration and management services; inclusive of healthcare professionals, logistics, secure technology and other associated activities needed to coordinate smaller and mass vaccination events.

OptumServe proposes using our established process for managing and executing health service events, similar to what we currently do with COVID-19 testing, to support CDPH with their mission to *Vaccinate all 58*, as shown in **Exhibit 1**. To enable rapid implementation, OptumServe will use a phased approach to address vaccination needs of the state. Phase 1 is the expansion of twenty (20) current OptumServe COVID-19 testing sites with the ability to administer an estimated 8,400 vaccines per day once all twenty sites are operational. Phase 2 is ramping the OptumServe capacity to support the deployment of 'Strike Teams' to sites provided by CDPH including larger mass vaccination sites.



## Exhibit 1: OptumServe Vaccine Event Overview



Specifically, OptumServe will provide:

- Coordination and administration of all COVID-19 vaccination events and related activities
  - Assign a Group Event Coordinator, ship of all Personal Protective Equipment [PPE] and necessary ancillary supplies to designated location, support proper cold-chain storage\*, staff with qualified clinical and non-clinical administrative personnel, set-up vaccination events and proper waste management.
    - \* OptumServe requires a partnership with CDPH for ultra-cold chain storage support (e.g. CDPH will provide ultra-cold chain storage)
- Technology for vaccine event management and reporting
  - Website and call center registration and scheduling of residents, appointment and second-dose reminders, integration with the California Immunization Registry CAIR, event throughput reporting
- Program management and clinical oversight
  - Dedicated program management, clinical training and emergency planning, ongoing clinical surveillance of on-site performance

## 2.1. Implementation and Scalability

OptumServe can implement all 20 sites in Phase 1 eleven (11) business days from contract start, with the first five (5) vaccination events 72 hours after contract award, assuming we receive We will assign an Event Operations Coordinator (EOC) who will work with CDPH and agree on an implementation approach and schedule in accordance with California's identified priorities and site availability. **Exhibit 2** shows OptumServe's proposed ramp-up timeline for Phase 1 and Phase 2 to reach approximately 100,000 vaccines doses per day. This scale is assuming 8-hour days and 5-day weeks. If CDPH is interested in providing services beyond 8-hours a day or 5-days a week, we will provide updated scale estimates and pricing.

**Exhibit 2: OptumServe Proposed Ramp-up Schedule for Phase 1 and Phase 2**

Reference	Week	Phase 1		Phase 2							
		1	2	3	4	5	6	7	8	9	10
<b>1 Team</b>	<b>Teams Available</b>	10	20	40	75	105	135	165	195	225	240
<b>420</b>	<b>Estimated Vaccine per Day</b>	4,200	8,400	16,800	31,500	44,100	56,700	69,300	81,900	94,500	100,800
<b>2,100</b>	<b>Estimated Vaccine per Week</b>	21,000	42,000	84,000	157,500	220,500	283,500	346,500	409,500	472,500	504,000
<b>8,400</b>	<b>Estimated Vaccine per Month</b>	84,000	168K	336K	630K	882K	1,134K	1,386K	1,638K	1,890K	2,016K

Immediately after contract award, OptumServe will:

- Initiate logistics and site planning with CDPH
- Begin staffing all clinical and non-clinical staff and initiate training
- Assign program management, clinical oversight and all back-end operations
- Begin developing resident communication and informational materials
- Establish command center personnel
- Confirmation that proposed vaccination sites have adequate space for desired throughput
- Work with CDPH to initiate provider registration and begin CAIR integration/training

The following information is needed before OptumServe can begin vaccinating Californian's:

- Support from CDPH to streamline provider registration in CAIR
- CDPH to provide an ordering physician who can receive vaccine allocations and release the vaccine to OptumServe custody until we are registered.
- Confirmation on delivery and pick up of vaccine to each OptumServe site
- Provide California specific registration questions required for the current rollout phase
- Confirmation that, if required, CDPH will provide ultra-cold chain freezers or access to ultra-cold chain freezers
  - If required that OptumServe provide ultra-cold chain freezers and/or dry ice, we will work with CDPH on expected availability
- Confirmation of vaccine type that will be used at a given site and that each site will only receive vaccine from one manufacturer to avoid medical risk
- For Phase 2 Strike Teams, CDPH will provide site locations and provide the following information no less than 72 hours before go-live, but preferably 5 business days:
  - A site POC we can work with to evaluate and plan the site go live, communication plans, eligibility and ongoing planning.

- Site location information (address, city, state, zip)
- Hours and days of operation
- All facility use agreements or permits required before vaccines can begin at a state provided location
- Facility layouts or site walk through to confirm site has the adequate space for a successful vaccine event (space for registration and vaccine stations, space for cold chain storage, space for reconstitution, adequate social distancing, space for adverse event observation)
- Site has power and internet connectivity; running water and bathrooms; AC/Heat as necessary

Once the above implementation requirements are complete OptumServe will rapidly:

- Complete provider/site registration with CDPH and finalize vaccine receiver
- Make online registration available for residents
- Supplies (PPE, signage, any cold-chain supplies determined, handouts, IT equipment, etc.) arrive on site the day before the event
- Finalize report formats with CDPH
- Go-Live

### 2.1.1. Vaccination Sites

**EXISTING COVID-19 TESTING SITES** OptumServe evaluated all active COVID-19 testing sites and propose twenty (20) sites, listed below in **Exhibit 3**, best suited for vaccination expansion. The first five (5) sites that will go live 72-hours after contract start are also highlighted below. These sites were chosen based on size to ensure proper infection controls can be maintained if testing and vaccinations occurred concurrently. While OptumServe proposes the 20 sites listed below, any of OptumServe's active fixed facility testing sites could be utilized for vaccination. Final confirmation that the sites identified are effective and safe for vaccine administration will be dependent on mutual agreement between CDPH and OptumServe and a clinical walk through of layout. Assuming there is adequate space, each site will be capable of administering approximately 420 vaccines per 8-hour day.

**Exhibit 3: Existing COVID Testing Sites for Vaccine Administration**

Site Address	County
18313 Valley Blvd	San Bernardino
3901 W El Segundo Blvd	Los Angeles
1730 Oregon Street	Alameda
2661 Oak Grove Road	Contra Costa
5293 Mission Blvd	Riverside
1142 S. P St	Kern
2955 Alum Rock Avenue	Santa Clara
91 Town Square	Solano
649 San Benito St	San Benito
307 Church Street	Santa Cruz
320 Third Street	Glenn
5246 Spriggs Lane	Mariposa
1055 N State St	Mendocino
1928 E Glenwood Place	Orange

5201 D Street	San Bernardino
1800 Oakdale Avenue	San Francisco
5679 Hollister Ave	Santa Barbara
240 CA-246	Santa Barbara
1301 Main Street	Santa Cruz
1900 W Olive Ave	Tulare

OptumServe is committed to keeping the same testing throughput at all sites expanding to include vaccinations. If it is determined that a site does not have adequate space to hold testing and vaccinations concurrently, OptumServe will work with CDPH to determine if a testing lane should be converted or if we should deploy fewer vaccinators for a smaller daily throughput.

**STRIKE TEAM SITES.** To enable increased scale and future phases of the vaccine rollout, OptumServe can deploy Strike Teams to CDPH provided sites. The throughput of a given site is dependent on site layout and the number of teams “available” per the ramp schedule provided in **Exhibit 2**. CDPH can request new sites through the OptumServe secure Client Portal, by e-mail, or by telephone. OptumServe prefers five (5) business days’ notice of a new site, but at a minimum OptumServe requires 72-hours’ notice (not counting Sunday’s). As described in **Section 2.1 Implementation & Scalability**, CDPH will need to provide OptumServe the required implementation information which includes but is not limited to:

- Vaccination site information (addresses, hours of operation, etc.) and site requirements
- Facility layouts to pre-plan clinical event flow and to ensure proper COVID-19 infection protocols
- Coordination of scheduling parameters
- Coordination on vaccine allocation, vaccine type, and proper storage

### 2.1.2. Vaccine Team

A single vaccine team can administer approximately 420 vaccines per 8-hour day. **Exhibit 4** shows our proposed staffing model and site square footage requirements to successfully administer either the Pfizer or Moderna vaccines. Staff makeup is subject to change as we learn more on-the-ground or if a new vaccine becomes available. All clinicians administering the vaccine will hold the appropriate licenses required by the state of California.

**Exhibit 4: OptumServe Vaccine Team**

Vaccine Team = Approximately 420 Vaccines/Day	Team Square Footage Requirements
<ul style="list-style-type: none"> <li>• One (1) Clinical Event Oversight Administrator</li> <li>• Two (2) Clinicians for reconstitution and cold chain management</li> <li>• Four (4) Clinicians for vaccine administration</li> <li>• Four (4) Administrative staff for greeting and check-in</li> <li>• Four (4) Administrative staff for data entry (scribe to the clinician)</li> <li>• Two (2) Administrative staff for post-vaccine observation</li> </ul>	<ul style="list-style-type: none"> <li>• 1,600 square feet of indoor space is required with indoor post-vaccination observation space</li> <li>• 1,000 square feet of indoor space is required if post-vaccination observation space is held outside</li> <li>• If post-vaccination observation is held outside, up to two (2) additional administration staff may be required</li> </ul>

## 2.2. Additional Pre-Event Considerations

**PROVIDER REGISTRATION.** Once vaccine sites are confirmed, OptumServe will work with CDPH to ensure we are properly registered in CAIR and CalVax to receive vaccine to our sites. To ensure a rapid implementation, OptumServe requests that CDPH provide a registered ordering physician who can release the vaccine to OptumServe custody until we are fully registered.

**DISTRIBUTION OPERATIONS CENTER (DOC).** Our Distribution Operations Center (DOC) provides a secure, controlled environment, including certified cold-chain storage capabilities. Our DOC will ensure any supplemental medical supplies, IT equipment, and administrative supplies are prepared, packaged, and shipped to the Vaccine event sites, in appropriate quantities for the expected volume of traffic per site. Our CDC recommended Personal Protective Equipment (PPE) package for vaccinations includes face shield or goggles surgical mask, gloves, hand sanitizer, and disinfectant.

**COLD CHAIN STORAGE & HANDLING.** OptumServe can provide cold chain storage support, dependent on vaccine manufacturer:

- **Moderna:** OptumServe will provide dedicated freezers, refrigerators, courier bags with cold packs, digital thermometers, and temperature loggers for vaccine storage and handling to meet the Moderna COVID-19 Vaccine Storage and Handling Summary instructions. Upon receipt of Moderna vaccine we will confirm that the TagAlert Temp Monitor enables use of vaccine. During the event operation, OptumServe will follow the storage and handling instructions provided by the CDC and Moderna. We will administer vaccines within 30 days of receipt as per Moderna instructions. According to CDC guidelines, recipients will record the temperature on the OptumServe-provided temperature control log each workday.
- **Pfizer:** Based on current supply restrictions, OptumServe initially requires that ultra-cold chain storage be managed by CDPH and transported to OptumServe in thawed format, or ensure an ultra-cold freezer is available on site. OptumServe can provide event staff with refrigerators, courier bags with cold packs, digital thermometers, and temperature loggers for vaccine storage and handling to meet the CDC Pfizer Storage and Handling Overview. When supply of freezers and/or dry ice is stable, OptumServe can discuss providing the required supplies to maintain our own ultra-cold storage with CDPH.

**STAFF TRAINING.** Ahead of the event, all group event staff will be required to undergo training that will be conducted within an online training module. In compliance with CDC guidance, the training will include processes for vaccine storage and handling, vaccine administration, vaccine patient communication, rules for wearing PPE, donning and doffing PPE, handwashing hygiene and infection control measures, and the “soft skills” required to work within this unique vaccine environment. In addition to the online curriculum, staff will complete a virtual competency validation of the require skills necessary to successfully perform services on a COVID-19 vaccine event. We include cultural sensitivity training for all personnel to ensure we can serve every employee with the highest level of customer service, in a respectful and socially conscientious manner. OptumServe will include any required training in the CA COVID-19 vaccination training program.

## 2.3. Vaccination Event Process Flow

### 2.3.1. Pre-Event

**REGISTRATION & SCHEDULING.** In our experience with COVID-19 testing in California, we find pre-registration with individual appointment times to be best way to manage patient flow into the site. Additionally at co-mingled sites with both testing and vaccines, pre-registration reduces the overall exposure risk to patients and staff. OptumServe will provide access to an online portal where residents can register for their vaccine appointment online. We will make online registration and scheduling in English available within 72 hours of contract start and receiving registration questions from CDPH. Registration and scheduling in Spanish will be available within 5 business days of contract award and receiving registration questions from the State.

Once registered, residents will be able to sign up for available time slots for both doses and even sign up for appointment notifications and reminders via email and/or text message, example shown in **Exhibit 5**. Signing up for both doses will better ensure second dose uptake and allows residents to flow through the event faster and not need to worry about scheduling their second dose.

Through these early phases of vaccine eligibility, OptumServe understands we will be serving a population that is less likely to have the capability or desire to use a digital (web-based) scheduling solution. To ensure the State can serve these users in these early phases, OptumServe will provide a call center for registration and scheduling in addition to the web-based option. The scheduling call center will be made available beginning week 2 of operations. For those who use the call center for scheduling or do not opt into using email/text, OptumServe will provide automated phone call reminders.

Registration information will be finalized in partnership with CDPH. General information collected may include basic demographic, allergy, and contraindications. We will also include specific questions to determine eligibility in accordance with the State's current COVID-19 vaccine rollout phases. Consent will be taken online if using the online registration system or verbally if using the scheduling call center.

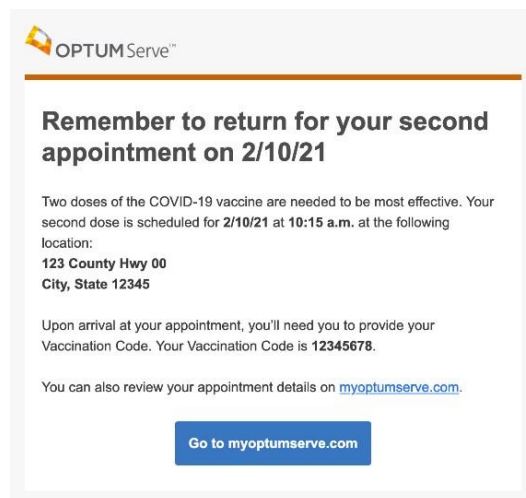
**SIGNAGE.** OptumServe will provide outdoor and interior signage that we can provide at each site (yard signs, banners, directional signage, request to adhere to clinical protocols, etc.). At each event, we will distribute appropriate documents to residents including Vaccine Information Statements (VIS) and information about V-SAFE for reporting adverse events.

**SET-UP.** All set-up will be initiated and completed on the day prior to the event. The OptumServe vaccine EOA will work with the OptumServe testing EOA and CDPH to evaluate the site space and logistics, to determine the best event set-up to account for best traffic flow, privacy for providers, and sound-level monitoring. They will establish the best fit for the services being provided and set up the tables, chairs, privacy screens, signage, laptops, printers, and scanners.

### 2.3.1. Event

**EVENT OPERATION.** Upon arrival at the vaccine event, OptumServe's administrative staff will check each resident into the process by verifying registration codes (sent to individual via text/email) and confirm demographics. The resident will then proceed into the vaccine administration area where they will be greeted by an OptumServe clinician. The clinician will provide the VIS, review allergy survey and contraindications, use vaccine that was pre-reconstituted or pre-drawn, administer the vaccine, discard used needle and syringe into sharps container, counsel the resident on next steps, and direct the attendee to the 15-minute adverse event observation area. During each administration an administrative staff member will be documenting all necessary information into the computer. After each patient, and throughout the day, the clinical staff will follow proper infection control requirements in accordance with

**Exhibit 5: Example Second Dose Reminder Email**





CDC. The clinician will then collect the next resident's vaccine supplies and proceed to the check-in area to greet them.

As part of our standard operating procedures, administrative staff and clinical staff receive instructions regarding how to routinely clean and sanitize all frequently touched surfaces throughout the operation of the event.

**EVENT OVERSIGHT.** During the event, the OptumServe EOA will ensure the administrative staff and health care providers perform all requested services required at each site. The EOA at each site will be the primary OptumServe POC during the event. They will establish communication with the team, meet with them to address any concerns onsite, and manage the set-up process according to the event plan. The EOAs monitor the schedule, event flow, and timeliness of the services to prevent wastage of vaccine. If any administrative or other issues arise regarding staffing, equipment malfunctions, training questions, or clinical questions, the EOA will be able to communicate with the OptumServe COVID Command Center staff who are available on call 24x7 while events occur.

**ADVERSE EVENT SUPPORT:** If anything should arise during the 15-minute observation period, OptumServe staff will be available to support, provide EpiPen and call for EMS if needed. Before leaving the event, OptumServe will provide residents the CDC adverse event hotline number and information on how access and use V-SAFE, the CDC phone application that allows patient to track and report any adverse events to their provider that may occur after they go home.

If any serious or select adverse events occur on-site or a vaccine administration error occurs, OptumServe will complete and submit reports to CDC's Vaccine Adverse Event Reporting System (VAERS).

### 2.3.1. Post-Event

**BIOHAZARD WASTE REMOVAL.** Daily, our EOAs ensure the event space is cleaned. OptumServe recommends that the State POC coordinate for a deep cleaning of the site each evening. We will comply with all local, state, and Federal laws for disposing of medical waste and biohazardous materials. They will also manage communication with the OptumServe Distribution Operations Center for additional supply requests as necessary.

**DATA REPORTING & TRANSMISSION:** All data collected will be sent to the California's immunization registry CAIR via their required transmission method within 24 hours of the event. Upon delegation of a single IT point of contact from California's CAIR team, OptumServe will work to have a one-way data exchange established to transmit vaccine information to CAIR within 14 days. This connection will be established between OptumServe and the state, per state/federal reporting requirements. Until the data exchange is established OptumServe will manually enter the data into CAIR. If there is a delay with CAIR registration, OptumServe will catch up on the data entry as soon as we are able to access CAIR. OptumServe will meet with CDPH IT representative(s) before first go-live to determine if any additional interfaces will be required beyond the public health system, come to an agreement on CDPH preferred transmission method, and any further IT requirements CDPH has.

## 2.4. Program Management and Clinical Oversight

Underlying the OptumServe onsite process is a program and clinical management infrastructure supporting and overseeing operations. The OptumServe organization will ensure that services delivered meet specifications of the State of California, and they will immediately initiate preventive or corrective actions upon identification of potential concerns.

### 2.1.1. Program Management

OptumServe will assign a Program Manager (PM) to oversee all vaccine delivery for CDPH. Our PM will communicate with key stakeholders to provide oversight and direction on all program activities to ensure compliance with all contract and performance requirements defined in the contract. The PM will also provide timely response and resolution to issues or concerns brought by the State. Our processes extend far beyond the day-to-day process of service delivery and include important planning and reporting to ensure new programs are implemented and managed successfully

### 2.1.1. Clinical Oversight

All vaccine teams are under the oversight of OptumServe's clinical leadership team made up of the Chief Medical Officer (CMO) and/or assigned Medical Director, and experienced RNs review ongoing compliance to standard operating procedures with daily meetings, ongoing training, and virtual check-ins/tours of the sites. These experienced Optum clinical leaders all hold active unrestricted licenses in their states. We will perform on-the-ground quality audits the first two weeks with any new personnel, and periodically thereafter.

**OPERATIONAL COMMAND CENTER.** OptumServe's COVID-19 Command Center provides a centralized resource for identifying event risks, responding to inquiries, and synthesizing options to determine the best course of action. Our trained Issue Resolution Specialists use predefined procedures to gather and process information required to assess and prioritize issues/risks, deploy and track critical resources through prospective mitigation, and provide situational awareness to ensure we react quickly and effectively. For example, they proactively review supply chain levels and respond; accordingly, call on-site staff the day before and day-of event to discuss site set up and review event details; and reach out regarding pre-event risk mitigation, when necessary. The command center is available 24/7 while events are operational to handle questions from the staff on the ground during vaccination events, to ensure rapid response and issue resolution for seamless event execution.

## 2.5. Communications with the Public

OptumServe will provide CDPH with a draft communication kit to review for news releases, press conferences, social media posts, websites, and other channels. CDPH and County partners will be responsible for disseminating materials and information about vaccination events, including informing residents that OptumServe vaccine events are pre-registration only and residents should not wait in line if they do not have an appointment. Any materials approved for release will be disseminated according to a schedule mutually agreed upon by CDPH and OptumServe. OptumServe will not issue any news releases or other materials intended for public consumption or awareness without the approval of CDPH.



### 3. Pricing & Pricing Assumptions

#### 3.1. Phase 1: 20 Single Team Sites

##### Single Team Vaccination Model (20 Sites)

Sites	20.0
Teams per Site	1.0
Workdays/Month	20.0
Maximum Vaccines (per Team, per Day)	420.0
Maximum Vaccines (per Day)	8,400.0
Total Vaccines / Month	168,000.0
Period of Performance (Months)	3.0

	20 Sites
	Est. Per-Month Fees
Total Program Fee	\$11,870,129
Site-Specific Materials & Supplies*	\$1,268,384

\*Estimated pass-through costs

Per Month Fee (20 Sites)	\$13,138,513
Total Fees Period of Performance (3 Months)	\$39,415,540

##### Optional Fees:

Security (Per Resource Per Day)	\$948
Interpreter (Per Resource Per Day)	\$409

## 3.2. Phase 2: Strike Teams

### Individual Strike Team Vaccination Model

Sites	1.0
Teams per Site	1.0
Workdays/Month	20.0
Maximum Vaccines (per Team, per Day)	420.0
Maximum Vaccines (per Day)	420.0
Total Vaccines / Month	8,400.0
Period of Performance (Months)	3.0

	Single Strike Team	
	Est. Per-Day Fees	Est. Per-Month Fees
Total Program Fee	\$29,675	\$593,506
Site-Specific Materials & Supplies*	\$3,171	\$63,419

\*Estimated pass-through costs

Per Team Per Day Fee	\$32,846
Per Team Per Month Fee	\$656,926
Per Team Period of Performance (3 Months)	\$1,970,777

#### Optional Fees:

Security (Per Resource Per Day)	\$948
Interpreter (Per Resource Per Day)	\$409

## 3.3. Pricing Assumptions

- The throughput and ramp schedule described Sections 2 & 3 above are dependent on the State providing the appropriate volumes of the COVID-19 vaccines and that the state provides the sites locations necessary to meet the vaccination demands.
- Adequate supply of COVID-19 vaccine are available to be procured by go-live date for each individual site.
- Program Fee is Firm-fixed price items
- Full Day includes 8 hours of vaccine administration; 4 minutes per shot; 60 mins of set-up & 30 mins teardown time, with a 30-minute unpaid lunch and two 15-minute paid breaks
- Total Program Fee includes on-site staff, program management, clinical oversight, call center, and all IT.
- Site specific materials includes: on-site cold chain supplies (vaccine transport container, thermometer, refrigerator, bar code scanner, etc.), EpiPen's, onsite team equipment, PPE, shipping, and signage
- Each Site includes 1 clinical oversight role/vaccine recipient, 4 LVN administrators at 4-minutes per shot, 2 RNs for reconstitution, 4 admins, 4 scribes, and 2 non-clinical observers
- Events will be held daily, 5 days per week
- CDPH will provide an ordering physician who will release the vaccine to OptumServe custody until OptumServe is fully registered in CAIR and CalVax
- For the first week scheduling will be done online only and pre-registration will be required; beginning week 2 a scheduling call center will be available
- When call center is made available, it is assumed the call center will see a 50% contact rate, driven primarily by phone registration
- The Parties agree that changes to this SOW can be made any time during the performance of this Agreement by mutual agreement as the Parties learn more about the vaccination roll out processes, procedures, and logistics.

- Travel costs are not included in the price; costs for bringing in clinical staff from other states will be evaluated if required and will be billed as cost reimbursable as a pass-through cost
- 1600 Square Feet of indoor space is required for 420 a day vaccine throughput with indoor post-vaccination observation space
- 1000 Square Feet of indoor space is required for 420 doses a day without post-vaccination observation (observation could occur outside)
- If observation is held outside, additional staff is required for observation
- If any of the 20 sites do not have adequate space for 420 doses a day, OptumServe will deploy a team capable of administering 210 doses per day
- For Strike teams, CDPH is responsible for providing the site locations and ensuring there is adequate space for a successful vaccine event (space for registration, cold chain, reconstitution, adequate social distancing, space for adverse event observation)
- CDPH is responsible for any ultra-cold chain storage and delivering thawed vaccine to site locations where OptumServe will maintain the cold-chain management on site
- CDPH is responsible for security of vaccines
- Optional Interpreter rates are based on resources that are bilingual in Spanish and English; if other languages are required, additional costs may be needed.
- PPE, event supplies, shipping, & vaccine costs will be billed at Cost + G&A expense, No Mark-up; Site specific or consumable supplies may also include items such as refrigeration, storage, facility costs, if applicable
- If vaccine is a multi-dose vial and unable to be administered in full, OptumServe will not be held responsible for the amount considered "spoilage"
- A cancellation fee will apply equal to the Full Day price if an event is cancelled with less than 72 hours' notice.

## 4.0 Miscellaneous Terms

Notwithstanding any other terms and conditions in the Agreement, the following additional terms shall apply.

- 4.1 PREP ACT:** The Services to be provided under this Agreement are covered countermeasures as defined under the U.S. Department of Health and Human Services' February 4, 2020 Declaration pursuant to Public Readiness and Emergency Preparedness Act, 85 Fed. Reg. 15, 198 (published March 17, 2020). The State has the authority to prescribe, administer, deliver, distribute, or dispense the test and other covered countermeasures as part of the State's response to the COVID-19 pandemic and authorizes the use of the Services in accordance with its public health and medical response to the COVID-19 Pandemic.
- 4.2 NOTICE AND OPPORTUNITY TO CURE:** Prior to exercising its right to terminate for cause under Exhibit C, Section 7 to the Agreement, the State shall provide Contractor with 10 calendar days written notice; such written notice will contain a reasonable description of the reason(s) for termination and Contractor will have the right to cure such default within such notice period, unless the State agrees in writing to a longer cure period.
- 4.3 LIMITATION OF LIABILITY:** EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL DAMAGES OR SIMILAR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY SOW HEREUNDER, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE).
- 4.4 DISCLAIMER OF WARRANTIES:** CONTRACTOR MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, ARISING FROM THE VACCINES OR SERVICES PROVIDED BY CONTRACTOR UNDER THIS AGREEMENT. ALL PRODUCTS AND SERVICES ARE PROVIDED STRICTLY "AS-IS," "AS-AVAILABLE," AND "WITH ALL FAULTS." CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS OF ANY KIND, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USE, OR A PARTICULAR OR BUSINESS RESULT, TITLE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. CONTRACTOR MAKES NO WARRANTY THAT THE PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT WILL: (I) PREVENT THE SPREAD OR INCURRENCE OF ANY ILLNESS, VIRUS, OR BACTERIA; (II) BE FREE FROM DEFECTS, WHETHER PATENT OR LATENT, IN DESIGN, MATERIALS OR WORKMANSHIP.

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

**1. Invoicing and Payment**

- A. In no event shall the Contractor request reimbursement from the State for obligations entered into or for costs incurred prior to the commencement date or after the expiration of this Agreement.
- B. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the amounts shown in Exhibit A Attachment 1 Section 3. Pricing & Pricing Assumptions.
- C. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears to:

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

D. Invoice shall:

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

E. Amounts Payable

The amounts payable under this agreement shall not exceed: \$45,000,000.00

**2. Budget Contingency Clause**

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

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

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

**5. Expense Allowability / Fiscal Documentation**

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

**6. Recovery of Overpayments**

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

**Exhibit B**  
Budget Detail and Payment Provisions

commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 days after Contractor's receipt of the State's demand for repayment.

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

**EXHIBIT C**  
**GENERAL TERMS AND CONDITIONS FOR NON-IT SERVICES CONTRACTS**  
**20-10917 – Logistics Health**

1. **APPROVAL:** This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. **ASSIGNMENT:** This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT:** Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees; and the Hosting County, its officers, agents and employees from any and all third party claims and losses accruing or resulting from any negligent or wrongful act, error or omission of Contractor in connection with Contractor's performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor's negligent or wrongful act, error or omission in the performance of this Agreement. Notwithstanding the foregoing, Contractor will have no obligation under this Section 5 or otherwise if the claim or loss results from the State's failure to perform its obligations under this Agreement. To the extent that Contractor is only partially responsible for a third party's claims or losses, Contractor's obligation to indemnify, defend and hold harmless the State and the Hosting County shall be reduced to the extent of Contractor's responsibility.
6. **LIMITATION OF LIABILITY:** EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL DAMAGES OR SIMILAR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR

**EXHIBIT C**

**GENERAL TERMS AND CONDITIONS FOR NON-IT SERVICES CONTRACTS**

**20-10917 – Logistics Health**

ANY SOW HEREUNDER, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE).

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

EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7 AND TO THE EXTENT PROHIBITED BY APPLICABLE LAW, THE SERVICES AND PRODUCTS PROVIDED

ADDITIONAL WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY AS TO THE SERVICES, PRODUCTS, OR ANY OTHER MATTER WHATSOEVER. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS OF ANY KIND, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USE, OR A PARTICULAR OR BUSINESS RESULT, TITLE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW, CONTRACTOR MAKES NO WARRANTY THAT THE PRODUCTS OR SERVICES

REQUIREMENTS OR INTENDED PURPOSES OR USES; (II) PREVENT THE SPREAD OR INCURRENCE OF ANY ILLNESS, VIRUS, OR BACTERIA; (III) BE FREE FROM DEFECTS, WHETHER PATENT OR LATENT, IN DESIGN, MATERIALS OR WORKMANSHIP.

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

9. TERMINATION FOR CAUSE: The State may terminate this Agreement and be

Agreement upon providing ten (10) calendar days written notice to Contractor; provided however, that such written notice will contain a reasonable description of the reason(s) for termination and Contractor will have the right to cure such default within such notice period, unless the State agrees in writing to a longer cure period. In the event of termination for cause, the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the



**EXHIBIT C**  
**GENERAL TERMS AND CONDITIONS FOR NON-IT SERVICES CONTRACTS**  
**20-10917 – Logistics Health**

Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

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

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

12. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the

records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.) Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

**EXHIBIT C**  
**GENERAL TERMS AND CONDITIONS FOR NON-IT SERVICES CONTRACTS**  
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13. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

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

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

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

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

- a. The Government Code Chapter on Antitrust claims contains the following definitions:
  - 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code. 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
- b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

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- c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

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

- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

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

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

21. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this

**EXHIBIT C**  
**GENERAL TERMS AND CONDITIONS FOR NON-IT SERVICES CONTRACTS**  
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Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

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

**22. LOSS LEADER:**

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business  
 ned in

Section 17030 of the Business and Professions Code. (PCC 10344(e).)

**23. FORCE MAJEURE:**

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

## Exhibit D

### Special Terms and Conditions [Rev 06-2019]

(Applicable to consultant and personal service contracts)

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

#### **Index**

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

## **Exhibit D**

### **Special Terms and Conditions**

#### **1. Cancellation**

- A. This agreement may be cancelled by CDPH **without cause** upon 30 calendar days advance written notice to the Contractor.
- B. CDPH reserves the right to cancel or terminate this agreement immediately 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 cancellation or termination shall be effective as of the date indicated in CDPH's notification to the Contractor. The notice shall stipulate any final performance, invoicing or payment requirements.
- E. Upon receipt of a notice of cancellation or termination, the Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent agreement costs.
- F. In the event of early cancellation or termination, the Contractor shall be entitled to compensation for services performed satisfactorily under this agreement and expenses incurred up to the date of cancellation and any non-cancelable obligations incurred in support of this agreement.

#### **2. Intellectual Property Rights**

##### **A. Ownership**

- 1) Except where CDPH has agreed in a signed writing to accept a license, CDPH shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.
- 2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
- 3) For the purposes of the definition of Intellectual Property, “works” means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.

## Exhibit D

### Special Terms and Conditions

- 4) 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.
- 5) Contractor agrees to cooperate with CDPH in establishing or maintaining CDPH's exclusive rights in the Intellectual Property, and in assuring CDPH's sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to CDPH all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or CDPH and which result directly or indirectly from this Agreement or any subcontract.
- 6) Contractor further agrees to assist and cooperate with CDPH in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce CDPH's Intellectual Property rights and interests.

#### B. Retained Rights / License Rights

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

#### C. Copyright

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

## **Exhibit D**

### **Special Terms and Conditions**

assign all right, title, and interest to CDPH to any work product made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.

- 2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement, shall include CDPH's notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2007, etc.], California Department of Public Health. This material may not be reproduced or disseminated without prior written permission from the California Department of Public Health." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

#### **D. Patent Rights**

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

#### **E. Third-Party Intellectual Property**

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

#### **F. Warranties**

- 1) Contractor represents and warrants that:
  - a. It is free to enter into and fully perform this Agreement.
  - b. It has secured and will secure all rights and licenses necessary for its performance of this Agreement.
  - c. Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition 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.



## **Exhibit D**

### **Special Terms and Conditions**

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

#### **G. Intellectual Property Indemnity**

- 1) Contractor shall indemnify, defend and hold harmless CDPH and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDPH's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. CDPH reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDPH.
- 2) Should any Intellectual Property licensed by the Contractor to CDPH under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve CDPH's right to use the licensed Intellectual Property in accordance with this Agreement at no expense to CDPH. CDPH shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for CDPH to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such

## **Exhibit D**

### **Special Terms and Conditions**

remedies are not reasonably available, CDPH shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.

- 3) Contractor agrees that damages alone would be inadequate to compensate CDPH for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges CDPH would suffer irreparable harm in the event of such breach and agrees CDPH shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

#### **H. Federal Funding**

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

#### **I. Survival**

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

#### **3. Confidentiality of Information**

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

## **Exhibit D**

### **Special Terms and Conditions**

#### **4. Dispute Resolution Process**

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

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

#### **5. Excise Tax**

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

## Exhibit E

**FEMA PROVISIONS****1. EQUAL EMPLOYMENT OPPORTUNITY**

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

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

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

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

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

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

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

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

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

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

## 2. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Compliance with the Contract Work Hours and Safety Standards Act.

- A. ***Overtime requirements.*** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. ***Violation; liability for unpaid wages; liquidated damages.*** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- C. ***Withholding for unpaid wages and liquidated damages.*** The State of California shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor

or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

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

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

- A. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.
- B. The contractor agrees to report each violation to the California Air Resources Board and understands and agrees that the California Air Resources Board will, in turn, report each violation as required to assure notification to the Department of Resources Recycling and Recovery, the California Governor's Office of Emergency Services, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
- C. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

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

- A. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Sections 1251 et seq.
- B. The contractor agrees to report each violation to the State Water Resources Control Board and understands and agrees that the State Water Resources Control Board will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
- C. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

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

- A. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the State of California. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## 6. BYRD ANTI-LOBBYING CLAUSE

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

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

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

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

*Paul Miller*

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Signature of Contractor's Authorized Official

Paul Miller

VP Finance

Name and Title of Contractor's Authorized Official

Date: 2/3/2021

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

- A. In the performance of this contract the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired-
  - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - i. Meeting contract performance requirements; or
  - ii. At a reasonable price.
- B. Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

## **8. ACCESS TO RECORDS**

The following access to records requirements apply to this contract:

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

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

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

## **10. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**

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

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

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

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

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



**Attachment F**  
**HIPAA Business Associate Addendum**

**I. Recitals**

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

**II. Definitions**

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

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

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

### **III. Terms of Agreement**

#### **A. Permitted Uses and Disclosures of PHI by Business Associate**

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

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

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- a. ***Use and disclose for management and administration.*** Use and disclose PHI for the proper management and administration of the Business Associate provided that such disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.
- b. ***Provision of Data Aggregation Services.*** Use PHI to provide data aggregation services to CDPH. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of CDPH with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of CDPH.

**B. Prohibited Uses and Disclosures**

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

**C. Responsibilities of Business Associate**

Business Associate agrees:

1. ***Nondisclosure.*** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by the Agreement or as required by law.
2. ***Safeguards.*** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of CDPH, in compliance with 45 CFR sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of PHI other than as provided for by the Agreement. Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR section 164, subpart C, in compliance with 45 CFR section 164.316. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section 3, Security, below. Business Associate will provide CDPH with its current and updated policies.
3. ***Security.*** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
  - a. Complying with all of the data system security precautions listed in Attachment A, the Business Associate Data Security Requirements;

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- b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of CDPH under the Agreement;
- c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
- d. In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of the Agreement.
- e. Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with CDPH.

D. **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.

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

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

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

- 1. To provide access as CDPH may require, and in the time and manner designated by CDPH (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to CDPH (or, as directed by CDPH), to an Individual, in accordance with 45 CFR section 164.524. Designated Record Set means the group of records maintained for CDPH that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for CDPH health plans; or those records used to make decisions about individuals on behalf of CDPH. Business Associate shall use the forms and processes developed by CDPH for this purpose and shall respond to requests for access to records

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

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

**G. *Amendment of PHI.*** To make any amendment(s) to PHI that CDPH directs or agrees to pursuant to 45 CFR section 164.526, in the time and manner designated by CDPH.

**H. *Internal Practices.*** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from CDPH, or created or received by Business Associate on behalf of CDPH, available to CDPH or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by CDPH or by the Secretary, for purposes of determining CDPH's compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Business Associate, Business Associate shall so certify to CDPH and shall set forth the efforts it made to obtain the information.

**I. *Documentation of Disclosures.*** To document and make available to CDPH or (at the direction of CDPH) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 CFR section 164.528 and 42 U.S.C. section 17935(c). If Business Associate maintains electronic health records for CDPH as of January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after January 1, 2014. If Business Associate acquires electronic health records for CDPH after January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.

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

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

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

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

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

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

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5. **Responsibility for Reporting of Breaches.** If the cause of a breach of PHI or PI is attributable to Business Associate or its agents, subcontractors or vendors, Business Associate is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured PHI involves more than 500 residents of the State of California or its jurisdiction, Business Associate shall notify the Secretary of the breach immediately upon discovery of the breach. If Business Associate has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to CDPH in addition to Business Associate, Business Associate shall notify CDPH, and CDPH and Business Associate may take appropriate action to prevent duplicate reporting. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 1, above.
6. **CDPH Contact Information.** To direct communications to the above referenced CDPH staff, the Contractor shall initiate contact as indicated herein. CDPH reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

<b>CDPH Program Contract Manager</b>	<b>CDPH Privacy Officer</b>	<b>CDPH Information Security Officer</b>
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer Privacy Office, c/o Office of Legal Services California Department of Public Health 1415 L Street, 5 <sup>th</sup> Floor Sacramento, CA 95814  Email: <a href="mailto:privacy@cdph.ca.gov">privacy@cdph.ca.gov</a> Telephone: (877) 421-9634	Chief Information Security Officer Information Security Office California Department of Public Health P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413  Email: <a href="mailto:cdphiso@cdph.ca.gov">cdphiso@cdph.ca.gov</a> Telephone: IT Service Desk (916) 440-7000 or (800) 579-0874

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**K. *Termination of Agreement.*** In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Business Associate knows of a material breach or violation by CDPH of this Addendum, it shall take the following steps:

1. Provide an opportunity for CDPH to cure the breach or end the violation and terminate the Agreement if CDPH does not cure the breach or end the violation within the time specified by Business Associate; or
2. Immediately terminate the Agreement if CDPH has breached a material term of the Addendum and cure is not possible.

**L. *Due Diligence.*** Business Associate shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Addendum and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Addendum.

**M. *Sanctions and/or Penalties.*** Business Associate understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Business Associate may result in the imposition of sanctions and/or penalties on Business Associate under HIPAA, the HITECH Act and the HIPAA regulations.

**IV. Obligations of CDPH**

CDPH agrees to:

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

**B. *Permission by Individuals for Use and Disclosure of PHI.*** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.

**C. *Notification of Restrictions.*** Notify the Business Associate of any restriction to the use or disclosure of PHI that CDPH has agreed to in accordance with 45 CFR section 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.

**D. *Requests Conflicting with HIPAA Rules.*** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by CDPH.

**V. Audits, Inspection and Enforcement**

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



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

## **VI. Termination**

- A. *Term.*** The Term of this Addendum shall commence as of the effective date of this Addendum and shall extend beyond the termination of the Agreement and shall terminate when all the PHI provided by CDPH to Business Associate, or created or received by Business Associate on behalf of CDPH, is destroyed or returned to CDPH, in accordance with 45 CFR 164.504(e)(2)(ii)(I).
- B. *Termination for Cause.*** In accordance with 45 CFR section 164.504(e)(1)(ii), upon CDPH' knowledge of a material breach or violation of this Addendum by Business Associate, CDPH shall:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Agreement if Business Associate does not cure the breach or end the violation within the time specified by CDPH; or
  2. Immediately terminate the Agreement if Business Associate has breached a material term of this Addendum and cure is not possible.
- C. *Judicial or Administrative Proceedings.*** Business Associate will notify CDPH if it is named as a defendant in a criminal proceeding for a violation of HIPAA. CDPH may terminate the Agreement if Business Associate is found guilty of a criminal violation of HIPAA. CDPH may terminate the Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- D. *Effect of Termination.*** Upon termination or expiration of the Agreement for any reason, Business Associate shall return or destroy all PHI received from CDPH (or created or received by Business Associate on behalf of CDPH) that Business Associate still maintains in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall notify CDPH of the conditions that make the return or destruction infeasible, and CDPH and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. Business Associate shall continue to extend the protections of this Addendum to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

## **VII. Miscellaneous Provisions**

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

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received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

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

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**Attachment A**  
**Business Associate Data Security Requirements**

**I. Personnel Controls**

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

**II. Technical Security Controls**

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

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- F. Patch Management.** All workstations, laptops and other systems that process and/or store CDPH PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- G. User IDs and Password Controls.** All users must be issued a unique user name for accessing CDPH PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
- Upper case letters (A-Z)
  - Lower case letters (a-z)
  - Arabic numerals (0-9)
  - Non-alphanumeric characters (punctuation symbols)
- H. Data Destruction.** When no longer needed, all CDPH PHI or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the CDPH Information Security Office.
- I. System Timeout.** The system providing access to CDPH PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- J. Warning Banners.** All systems providing access to CDPH PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- K. System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for CDPH PHI or PI, or which alters CDPH PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If CDPH PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- L. Access Controls.** The system providing access to CDPH PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.

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

### III. Audit Controls

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

### IV. Business Continuity / Disaster Recovery Controls

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

### V. Paper Document Controls

- A. *Supervision of Data.*** CDPH PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. CDPH PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- B. *Escorting Visitors.*** Visitors to areas where CDPH PHI or PI is contained shall be escorted and CDPH PHI or PI shall be kept out of sight while visitors are in the area.
- C. *Confidential Destruction.*** CDPH PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.

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- D. *Removal of Data.*** CDPH PHI or PI must not be removed from the premises of the Contractor except with express written permission of CDPH.
- E. *Faxing.*** Faxes containing CDPH PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
- F. *Mailing.*** Mailings of CDPH PHI or PI shall be sealed and secured from damage or inappropriate viewing of PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of CDPH PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of CDPH to use another method is obtained.