

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER 21-10369	PURCHASING AUTHORITY NUMBER (If Applicable)
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1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

California Dept. of Public Health

CONTRACTOR NAME

McKinsey & Company, Inc. Washington D.C.

2. The term of this Agreement is:

START DATE

7/1/21

THROUGH END DATE

09/31/21

3. The maximum amount of this Agreement is:

\$2,400,000.00

Two million four hundred thousand and no 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
Exhibit A	Attachment I	4
Exhibit B	Budget Detail and Payment Provisions	3
+ - Exhibit C *	General Terms and Conditions	04/2017
+ - Exhibit D	Special Terms and Conditions	8

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

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

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

CONTRACTOR

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

McKinsey & Company, Inc. Washington D.C.

CONTRACTOR BUSINESS ADDRESS

1200 19th Street NW Suite 1000

CITY

Washington

STATE

D.C.

ZIP

20036

PRINTED NAME OF PERSON SIGNING

Celia Huber

TITLE

Senior Partner

CONTRACTOR AUTHORIZED SIGNATURE



DATE SIGNED

7/15/2021

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER 21-10369	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

Timothy Bow

TITLE

Procurement Officer

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

EO-N-25-20-COVID19

PCC-1102

**Exhibit A
Scope of Work**

1. Service Overview

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

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

McKinsey & Company, Inc. Washington D.C. (McKinsey) has outlined a potential set of activities for CDPH to develop a strategic vision and framework for its future public health system, and the investments needed to meet that vision. We jointly expect the support needs to evolve over the coming weeks and months. With that in mind, we will work closely with you to dynamically focus our efforts where they can be most impactful. We look forward to partnering with you in this critical work.

2. Service Location

The services shall be performed at mutually agreed location(s).

3. Service Hours

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

4. Project Representatives

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

California Department of Public Health Christine Siador Telephone: 916-558-1784 Fax: (916) 650-6420 E-mail: Christine.Siador@cdph.ca.gov	McKinsey & Company, Inc. Washington D.C. Ashley Alexandrova Telephone: (310) 340-8701 Fax: N/A E-mail: Ashley_Alexandrova@mckinsey.com
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B. Direct all inquiries to:

California Department of Public Health Director's Office Christine Siador 1615 Capitol Ave. Sacramento, CA 95814 Telephone: 916-558-1784 E-mail: Christine.Siador@cdph.ca.gov	McKinsey & Company, Inc. Ashley Alexandrova 2000 Avenue of the Stars Suite 800N Los Angeles CA 90067 Telephone: (310) 340-8701 Fax: N/A E-mail: Ashley_Alexandrova@mckinsey.com
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C. All payments from CDPH to the Contractor; shall be sent to the following address:

Remittance Address
Contractor: McKinsey & Company, Inc. Washington D.C.
Attention "Cashier":
1200 19th Street NW Suite 1000
Washington, D.C. 20036
Phone
Fax
Email

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

Contractor shall perform services as outlined in Attachment A-1

Exhibit A - Attachment I

Future Public Health System

Context

Coming out of the COVID-19 pandemic, increased recognition of the gaps in essential infrastructure to effectively meet the core public health mandate to prevent, promote, and protect Californians, measurable racial, ethnic, geographic inequities in public health access and outcomes, impact of historic underfunding to state and local public health departments (workforce shortages, aging technology and physical infrastructure). The State believes this is once-in-a-generation opportunity to re-imagine the future public health system and create resiliency through prediction, prevention and response capabilities and to re-imagine working relationship across municipal, county, regional, and state partners, as well as private and social sector orgs

At the request of CDPH leadership, McKinsey & Company, Inc. Washington D.C. (McKinsey) has outlined a potential set of activities for CDPH to develop a strategic vision and framework for its future public health system, and the investments needed to meet that vision. We jointly expect the support needs to evolve over the coming weeks and months. With that in mind, we will work closely with you to dynamically focus our efforts where they can be most impactful. We look forward to partnering with you in this critical work.

Scope

The intention of the scope statement that is outlined below is to provide the necessary support to enable the effort to advance its goals through September. Based on our discussions, we will continue to evolve the scope and/or reallocate team members as priorities or resources change based on your guidance. At this time, there are three scope areas that you would like support for in the immediate term:

1. **Support CDPH draft a bold vision for the future public health system** in California, and the role(s) of partners in achieving the vision and outcomes (e.g. state, local health jurisdictions, private healthcare stakeholders, etc.)
2. **Support and facilitate “future of public health” workgroup to determine needs of the public health system** to meet that vision, and what it would take to do so
3. **Partner with CDPH leadership to generate an analytical evidence base** to support the public health recommendations to inform the Governor’s 2022 budget proposal

The activities and details associated with each are described below:

1. **Support CDPH define a bold vision for the future public health system**
 - 1.1. Facilitate session with workgroup to align on a future vision & outcomes for Public Health
 - 1.1.1. Iterate on vision statement
 - 1.1.2. Define the key trends that California’s future public health system must address
 - 1.1.3. Align on key outcomes, indicators, and sources of distinctiveness with workgroup
 - 1.1.4. Define and assess potential archetypes for state public health systems that will enable CA to reach its vision

- 1.1.5. Collate evidence base of best-in-class examples of 'great' across public/private sectors for core public health functions (e.g. data science, workforce, IT, and emergency preparedness, etc.)
- 1.2. Collaborate with workgroup and CDPH to support design of roles / responsibilities in executing the future vision
 - 1.2.1. Establish a schema of core public health capabilities and functional areas
 - 1.2.2. Align on role of various stakeholders in supporting core public health capabilities and functions based on archetypes (e.g. role of state, local, healthcare delivery system, managed care, in building laboratory capacity etc.)
- 2. **Support and facilitate “future of public health” workgroup to determine needs of the public health system**
 - 2.1. Define what is needed across capability areas and functions to achieve future vision (e.g. IT must enable data interoperability between healthcare delivery, laboratories, and public health; sufficient pathways for development to sustain talented workforce)
 - 2.2. Assess baseline maturity across top core functions for each area identified in 1.3, followed by an assessment of current state in CA
 - 2.2.1. Deep dive: Data science, information technology, & informatics maturity [core functions 1 & 6]
 - 2.2.2. Deep dive: Workforce development, recruiting, and training maturity [core function 3]
 - 2.2.3. Deep dive: Emergency preparedness and response [core function 7]
 - 2.2.4. Light touch: Population health management and health promotion, public education & community partnership, and laboratory capacity maturity [core function 2, 4, 5]
 - 2.2.5. Light touch: As needed, additional assessments based on outputs identified in 1.3
 - 2.3. Identify the gaps between current state and future needs
 - 2.3.1. Merge baseline assessment and investment requirements to determine the incremental effort required against each core component
 - 2.3.2. Identify dependencies across core components (e.g. informatics cannot be distinctive without distinctive IT - illustrative)
- 3. **Partner with CDPH leadership to generate an analytical evidence base**
 - 3.1. Support CDPH finance in developing the estimations through an analytical fact-base to inform budgets for each core component
 - 3.1.1. Identify cost drivers to close gaps for each component area
 - 3.1.2. Collect industry benchmarks for costs
 - 3.1.3. Standardize budget templates for each core component
 - 3.1.4. Size each investment area based on gaps and population size
 - 3.2. Support in drafting and finalizing memo submission (chapters/sections to be drafted iteratively, for final review in mid- to late-August)

Arrangements

Our total professional fees for the engagement are outlined in Figure 1 below. This fee reflects all the resources required to deliver the impact and scope of work, inclusive of all expenses incurred and all required resources (e.g., administrative support, production, proprietary tools, benchmarks, data researchers) as well as COVID-specific resources. We have highlighted the fees that are applicable to this Statement of Work (SOW)

amendment in grey.

Figure 1: Support pricing

	<u>Total</u> Inclusive of all fees and expenses
Support CDPH draft a bold vision for the future public health system <ul style="list-style-type: none"> • Identify the key trends each enabler will need to address • Facilitate session with workgroup to align on a future vision & outcomes • Define capability areas and functions to achieve future vision • Assess baseline maturity for Data / IT, Emergency Preparedness, Workforce, and Population health management and health promotion, public education & community partnership, and laboratory capacity maturity 	\$720,000 (30%) – <i>By July 16, 2021</i>
Support and facilitate “future of public health” workgroup to determine needs of the public health system <ul style="list-style-type: none"> • Support design of roles / responsibilities in executing the future vision • Identify the gaps between current state and future needs, and the initiatives needed to close the gaps 	\$720,000 (30%) – <i>By July 30, 2021</i>
Partner with CDPH leadership to generate analytical evidence base to support recommendations <ul style="list-style-type: none"> • Support CDPH developing the estimations through an analytical fact-base (e.g., using metrics, cost drivers) • Support in drafting and finalizing memo for Future Public Health System 	\$960,000 (40%) – <i>By September 3, 2021</i>
<u>Total</u>	\$2,400,000

Pre-requisites

The scope of the activities and deliverables outlined above, and associated pricing assumes the following requirements for success:

- McKinsey and the State maintain a process to jointly re-prioritize focus areas to ensure on an ongoing basis that resources are deployed against the highest priority activities. Major changes to the prioritization in this document will be communicated by the State to McKinsey as soon as possible and will be captured in an email from McKinsey to the State to confirm such changes.
- The State will onboard the necessary resources to enable the effective handover of responsibilities to State ownership over time
- The State will continue to provide clarity on circumstances that may change the scope or expectations of the engagement.

Assumptions

In consideration for the services, the State agrees not to use McKinsey's name or trademark, without McKinsey's prior written permission and understands that McKinsey will not advocate, present findings, or speak on the State's behalf in any public forum without specific written authorization and agreement. Notwithstanding, McKinsey understands and acknowledges that the State may have legal obligations to disclose such information (e.g., as required under Public Disclosure or Freedom of Information Laws), but requests that the State provide prior notification to McKinsey in such a circumstance.

McKinsey will provide fact-based, independent analysis that the client can use to develop its own work and recommendations; McKinsey is not registered as a lobbyist and will not provide advice, opinions or recommendations on policy or political matters nor will it be involved in, or support, any advocacy, policy, or lobbying efforts. McKinsey's services cannot be for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing any legislative or administrative action.

McKinsey will provide the deliverables in the State's name and format, or as designated by the client, but with no reference to McKinsey or use of McKinsey's brand.

The State agrees not to use McKinsey's name externally in relation to the work without McKinsey's prior written permission.

The services shall not be deemed medical, investment, legal, tax, accounting or other regulated advice, such as professional advice normally provided by licensed or certified practitioners, and do not constitute policy advice. McKinsey does not supplant the client's management or other decision-making bodies and does not guarantee results. McKinsey's services under this engagement are an extension of and supplement to the government functions performed by the client. The State remains solely responsible for its decisions (including policy decisions), actions, use of the deliverables and compliance with applicable laws, rules and regulations.

McKinsey & Company, Inc. Washington D.C. ("McKinsey DC") primarily serves public sector clients, with some social sector and commercial client work. For additional transparency, we note that McKinsey & Company, Inc. United States ("McKinsey US"), an affiliate, provides or has provided consulting services in the US to commercial institutions across all industries, including medical electronics, consumer packaged goods (including food and beverages), tobacco, healthcare systems & services (including for-profit & not-for-profit hospitals and health systems, payers, services & technology vendors, distributors, pharmacies), pharmaceutical & medical products (prescription pain medication including, prior to 2019, prescription opioid products), and technology. McKinsey US's consulting services include analysis, advice, and implementation support across many areas of business, including marketing and commercial growth, operations, strategy, corporate finance, organization, risk, technology, transformation, mergers & acquisitions topics,. McKinsey DC and McKinsey US do not generally hold ownership interests in their clients, but we note that other affiliates may hold ownership interests in McKinsey US clients across various industries.

These services are being provided as covered countermeasures to the COVID-19 epidemic pursuant to the U.S. Department of Health and Human Services' February 4, 2020 Declaration pursuant to the Public Readiness and Emergency Preparedness Act and are to be used as authorized by the public agency to which they ultimately are provided.

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 specified amount in this Exhibit B paragraph E – Amounts Payable.
- C. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears to:

[Phebe Lapinig, Program Analyst](#)
California Department of Public Health
Emergency Preparedness Office
[Mail Station Code 7002](#)
[1615 Capitol Ave. 73.373](#)
[Sacramento, CA 95814](#)
Phebe.lapinig@cdph.ca.gov

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

E. Amounts Payable

The amounts payable under this agreement shall not exceed: \$2,400,000.00

2. Budget Contingency Clause

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

Exhibit B
Budget Detail and Payment Provisions

3. Prompt Payment Clause

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

4. Timely Submission of Final Invoice

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

5. Expense Allowability / Fiscal Documentation

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

6. Recovery of Overpayments

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

Exhibit B

Budget Detail and Payment Provisions

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

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

(Applicable to consultant and personal service contracts)

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

Index

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

Exhibit D
Special Terms and Conditions

1. Cancellation

- A. This agreement may be cancelled by CDPH **without cause** upon 30 calendar days advance written notice to the Contractor.
- B. CDPH reserves the right to cancel or terminate this agreement immediately 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.
- 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

Exhibit D Special Terms and Conditions

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 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.

Exhibit D Special Terms and Conditions

- 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.
 - 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

Exhibit D
Special Terms and Conditions

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 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

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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.

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.

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- 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.

6. **Evaluation of Contractor (Applies to Consultant Services Agreements only)**

Performance of the Contractor under this Agreement will be evaluated. The evaluation shall be prepared on Contract/Contractor Evaluation Sheet (STD 4), and maintained in the Agreement file. For consultant agreements, a copy of the evaluation will be sent to the Department of General Services, Office of Legal Services, if it is negative and over \$5,000.

7. **Performance Evaluation (Applies to Consultant Services Agreements only)**

- A. The Contractor's performance under this agreement shall be evaluated at the conclusion of the term of this agreement. The evaluation shall include, but not be limited to:
 - 1) Whether the contracted work or services were completed as specified in the agreement, and reasons for and amount of any cost overruns.

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- 2) Whether the contracted work or services met the quality standards specified in the agreement.
 - 3) Whether the Contractor fulfilled all requirements of the agreement.
 - 4) Factors outside the control of the Contractor, which caused difficulties in contractor performance. Factors outside the control of the Contractor shall not include a Subcontractor's poor performance.
- B. The evaluation of the Contractor shall not be a public record (PCC 10370).