

Reset Form

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SCO ID: 4265-2010982

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

20-10982

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

Primary Diagnostics, Inc.

2. The term of this Agreement is:

START DATE

3/23/2021

THROUGH END DATE

9/30/2021

3. The maximum amount of this Agreement is:

\$6,000,000.00

Six 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	7
Exhibit B	Budget Detail & Provisions	3
+ - Exhibit C	General Terms & Conditions	04/2017
+ - Exhibit D	Special Terms and Conditions	7
+ - Exhibit E	Information Privacy & Security Requirements	11

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.)

Primary Diagnostics, Inc.

CONTRACTOR BUSINESS ADDRESS

595 Pacific Ave Floor 4

CITY

San Francisco

STATE

CA

ZIP

94133

PRINTED NAME OF PERSON SIGNING

Andrew Kobylinski

TITLE

CEO

CONTRACTOR AUTHORIZED SIGNATURE

Digitally signed by Andrew Kobylinski
Date: 2021.03.25 15:43:09 -07'00'

DATE SIGNED

3/25/2021

[Reset Form](#)[Print Form](#)**SCO ID: 4265-2010982**

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STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

20-10982

PURCHASING AUTHORITY NUMBER (If Applicable)

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

Timothy BowDigitally signed by Timothy
Bow
Date: 2021.03.25 15:58:39
-07'00'

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.

In response to the Governor's Proclamation of a State of Emergency dated March 4, 2020, and Executive Order N-25-20, due to current public health emergencies, the California Department of Public Health (CDPH) has determined that CDPH must take immediate action consistent with the State's Public Contract Code (PCC) 1102.

Contractor shall store laboratory and medical records data according to CDPH Laboratory Director's specifications / requirements and upon termination of antigen testing or expiration of the contract, return data to CDPH pursuant to CDPH Laboratory Director Instructions.

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 during various hours as determined by CDPH and Contractor.

4. Project Representatives

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

California Department of Public Health	Primary Diagnostics, Inc.
Carol Glaser Telephone: 916-594-6126 Fax: N/A E-mail: carol.glaser@cdph.ca.gov	Phoebe Gutierrez Telephone: 1-855-970-0077 Fax: N/A E-mail: phoebe@primary.health

B. Direct all inquiries to:

California Department of Public Health	Primary Diagnostics, Inc.
Attention: Carol Glaser 850 Marina Bay Pkwy, Richmond, CA 94804 Telephone: 916-594-6126 Fax: N/A E-mail: carol.glaser@cdph.ca.gov	Attention: Phoebe Gutierrez 595 Pacific Ave Floor 4 San Francisco, CA 94133 Telephone: 1-855-970-0077 Fax: N/A E-mail: contracts@primary.health

Exhibit A
Scope of Work

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

Remittance Address
Primary Diagnostics, Inc.
Attention: Accounts Payable
595 Pacific Ave, Floor 4
San Francisco, CA 94133
1-855-970-0077
ap@primary.health

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 to perform services relating to Antigen testing as outline in Attachment 1 of this Exhibit.

6. Misc.

1. Contractor shall store laboratory and medical records data according to CDPH Laboratory Director's specifications / requirements. Upon expiration or termination of the contract, contractor shall return any and all related data to CDPH pursuant to CDPH Laboratory Director instructions
2. Contractor shall provide the Software platform's administrative security rights as requested by CDPH.

Introduction

Frequent, consistent, low-cost rapid antigen testing is an economical and sustainable way to help control the spread of COVID-19 in congregate settings, such as classrooms, long-term care facilities, homeless shelters, and other environments. Primary Health has experience setting up and operating rapid testing programs for diverse populations, and the California Department of Public Health would benefit from our expertise to deploy the state's stockpile of Abbott cards in schools, homeless shelters, assisted living facilities, and farmworker communities. Our experience with vulnerable populations and those with limited digital literacy makes us uniquely qualified to operate a statewide program.

Project Overview

Primary.Health proposes to build out and operate a statewide program to stand up rapid testing in five main settings:

1. Schools
2. Homeless shelters
3. Long-term care facilities
4. Employment sectors as determined by state needs and test kit availability, and,
5. Disaster response

Except for agreements funded by Public Health Institute (e.g., SOS schools), any existing agreements Primary may have with School Districts or County Offices of Education may be incorporated and/or transitioned into this agreement as approved by CDPH.

Primary.Health's Services

Primary will work with CHHS and CDPH to ensure adequate training and support for participating organizations to be able to run efficient and user-friendly testing programs. Primary will provide site logistics and process engineering playbooks, clinical and software trainings, registration and consent, onsite workflow management, lab ordering and resulting through VBL, automated state/county reporting and test result notifications, account management and technical support, and data analytics and dashboards to inform policymakers on health equity metrics and overall program performance.

Notwithstanding anything in this Agreement (including Section 2 of Exhibit D) to the contrary: (a) as between the parties, Primary will retain exclusive ownership of all right, title, and interest in and to the software platform and associated materials provided, developed, or made available by Primary in connection with the services hereunder (and all modifications, enhancements, and updates thereto), including all intellectual property and proprietary rights therein (collectively, "Primary IP"); and (b) CDPH agrees that it may use Primary IP only in connection with CDPH's receipt of the services provided hereunder.

Populations and Settings

Primary will work with organizations from each of the five population groups to onboard them into the software platform and train them to run their own rapid testing programs for symptomatic and asymptomatic individuals. Primary will provide playbooks and protocols on how to safely test symptomatic individuals in a separate, designated, and well-ventilated area. Sites shall include, but not be limited to, schools, long-term care facilities, homeless shelters and other locations for homeless populations, employer-based sites, disaster response locations, including temporary shelters, and other sites identified by the State.

Software Trainings

- Build out online training modules on how to use Primary's platform for registering patients, checking participants in and out, and logging results.
- Expand upon CDPH and Primary's existing curricula and playbooks for proper Personal Protective Equipment (PPE) and sanitation protocols, self- or assisted swabbing techniques, proper test administration and interpretation of Binax results, and appropriate reflex PCR protocols including trainings on Primary's PCR software. The finalized playbook shall be approved by CDPH.
- Provide self-guided online modules using videos, FAQ documents, one-pagers, as well as group virtual instruction and weekly office hours to ask questions.

Digital Registration and Consent

- Set up registration portals where participants can register and consent to the rapid testing program or be assisted by testing staff to register.
- Allow organizations to upload staff, patient, student, or other roster data into the system so that information can be pre-populated.
- Generate QR codes for onsite registration, as needed.
- Provide unique URLs or access codes to ensure only those who are eligible can register, as appropriate.
- Support the state in developing standardized consent templates in designated languages (see below) at culturally and linguistically appropriate reading levels.
- The platform will be fully HIPAA-compliant and will include the following:
 - Optimized functionality in the following Medi-Cal threshold languages:
 - English
 - Spanish
 - Arabic
 - Armenian
 - Chinese (Mandarin and Cantonese)
 - Hmong
 - Korean
 - Russian
 - Tagalog
 - Vietnamese

- Ability to:
 - Collect electronic consent from participants, including HIPAA authorization (if applicable) for data sharing
 - Register household members
 - Collect health insurance information (optional for inclusion)
 - Provide identification number (optional for inclusion)
 - Collected limited personal information (to be approved by the state)
 - Screen and log symptoms
 - Configure on-demand and/or appointment slotting options
 - Log paper consent forms and associate digitally with correct participant
 - Allow for one-time enrollment for large events

Automated State/County Reporting

- Report all BinaxNOW™ results on behalf of each participant organization to CalREDIE and any county databases that do not automatically pull from CalREDIE.
- Data provided to CalREDIE will report the organization the test is associated with, as well as any pertinent data elements that CalREDIE can collect that are gathered during the standard testing procedures in the application.

Automated result notifications

- Send automated notifications via text, email, or robo-call (for landline-only numbers) to participants (or their parents/designated contact person) with test results.
- Allow participants to:
 - Access their results within one hour of their results being logged into the system.
 - View their testing history (including PCR if done through Primary).

PCR Lab Ordering and Resulting

Primary will integrate with Color to ensure participating organizations have the ability to run reflex PCR testing programs and send samples to the Valencia Branch Laboratory (VBL).

Data and Dashboards

- Provide both organization-level and system-wide data analytics and dashboards to evaluate program performance, identify trends and patterns, and ensure health equity goals are being met.
- Provide deidentified, aggregated dashboards across the entire population for each module as well as ensure each organization has access to their own data.
- Provide monthly reports to CDPH representatives regarding adverse events of testing.
- Provide weekly reports to CDPH representatives of known false positives, false negatives or indeterminant results for discordant PCR tests (if run through Primary).
- Dashboard refinement with state input.

- Establish various levels of administrative privileges to protect personal health information (PHI) from unauthorized users.

Account Management and Technical Support

- Assign a team of account and technical program managers to support participating organizations in onboarding, training, and ongoing technical support.
- Access to online training modules and resources.
- Call center: dedicated agents and multi-lingual technical support, 7 days a week, 8:00 am to 5:00 pm.

	Bill Rate	Tier 1	Tier 2	Tier 3	Tier 4
Project Manager	\$68	0.5	0.5	1	1
Lead	\$47	1	1	2	4
English-only speakers	\$34	7	14	21	19
		.			
Language speakers	\$50	3	6	9	21
Total Agents		10	20	30	40
Admin (5%)					
Total Price Per Month		\$75,000	\$150,000	\$250,000	\$350,000
		10 Agents	20 agents	30 Agents	40 Agents
Language Coverage		English + Spanish + Language Line	English + Spanish + 1 Additional Language + Language Line	English + Spanish + 2 Additional Languages + Language Line	English + Spanish + 2 Additional Languages + Language Line

Implementation and Timeline

- Initial contract duration: 6 months, with 6-month extension (pricing negotiable upon renewal)
- School and non-school implementation:
 - Primary will be ready to begin onboarding schools within 2 weeks of contract execution (and non-schools within 3 weeks of contract execution), assuming all data-sharing agreements, consent forms, intake forms, and other standardized requirements have been mutually approved.
 - Primary to work with the State to identify priority districts and organizations and/or a first-come, first-served onboarding process.

- CDPH agrees to provide clear communication to participating organizations that they cannot begin testing until all intake forms have been submitted and QA'd, parents/staff have been properly informed of the testing program before invitation links go out, and that all staff who will be involved with testing have completed sufficient confidentiality, clinical, and software trainings.
- Call center go-live: 3 weeks from contract execution.

Roles & Responsibilities

- State responsibilities
 - Approve eligible organizations
 - Secure MOUs and provide guidelines for participation, including communication about onboarding checklists and responsibilities
 - Provision of sample collection kits to local county offices of education (schools) and departments of public health (non-schools)
 - Facilitate integration with Color software to enable Primary to order PCR tests through Valencia
 - Facilitate Color sending test kits to participating schools for reflex PCR
- Primary responsibilities (see SOW)
 - Playbooks and best practices on site logistics and process engineering
 - Clinical and software trainings
 - Customized registration pages and participant invitations
 - Registration and consent
 - Appointment reminders (as applicable, on-demand also available)
 - Onsite workflow management
 - Lab ordering and resulting through VBL/Color
 - Automated state/county reporting and test result notifications
 - Account management and call center/technical support
 - Data analytics and dashboards
- Collection site responsibilities (schools and non-schools)
 - Provide appropriate hardware (tablets, laptops) and Internet access for testing
 - Ensure sufficient PPE is provided to all staff who will be involved in testing
 - Complete all intake forms, profile settings, and roster uploads (if applicable) within Primary
 - Ensure all staff who will administer or assist in administering tests have completed all clinical and software trainings before testing begins
 - Ensure all staff who have access to tests results or other student/personal health information have completed (HIPAA, FERPA, or other) confidentiality training
 - Ensure that the testing location and workflow protocols comply with the sanitation and safety guidelines in the CDPH and Primary playbooks
 - Communicate with parents/staff or other program participants about the testing program in advance of any communications going out from Primary

Budget based on Revised Scope of Work

Primary.Health stands ready to adapt the program as needed. Our platform is test agnostic, lab agnostic, and vaccine agnostic. We can and have nimbly pivoted to new testing modalities that promote the most affordable, convenient, and scientifically sound public health strategies.

Term: 6 months, with optional 6-month renewal (pricing negotiable upon renewal)	
Start-up Costs	Fee
Initial project plan and module build-out	\$12,500
Development of standardized consent forms, data-sharing agreements, registration pages, result rules for each module in all threshold languages	\$14,000
Development of software training modules	\$50,000
Development of registration portals and system configurations	\$45,000
Integration with Color for PCR tests to Valencia Branch Lab	\$18,500
CalREDIE and county reporting integrations for each module	\$10,000
Dashboard configuration for each module	\$25,000
Testing and readiness/go-live	\$25,000
Total Start-Up Fees	\$200,000
Ongoing Fees (valid for initial 6 months, negotiable upon renewal)	Fee
Monthly Software Platform Fee	\$685,000
Antigen Per Test Fee for each test up to 3,000,000 tests in the month	\$1.00
Antigen Per Test Fee for each test over 3,000,000 tests in the month	\$0.75
PCR ordered through VBL/Color in Primary's system	\$3.00
Per Dose Fee - Vaccine	\$2.00

Revised Proposal: Statewide Rapid Testing Program



Monthly Fee Calculation with Credits/Caps	Total Fees
When Under 3,000,000 Antigen Tests: The lesser of: (1) Total Monthly Antigen Per Test Fee plus Software Platform Fees; or (2) \$2,000,000 Capped Amount* applies	= the lesser of (Number of tests under 3 Million times \$1.00 plus Software Platform Fees) or (Capped Amount \$2,000,000)
When Over 3,000,000 Tests; The calculation is the Capped Amount* plus \$0.75 for each antigen test over 3M	= \$2,000,00 plus (\$0.75 times the number of tests over 3 Million)

* Call Center, Vaccine, and PCR are not part of the Capped Amount

Call Center (optional, with approval from CDPH)	Monthly Fee
Tier 1	\$75,000
Tier 2	\$150,000
Tier 3	\$250,000
Tier 4	\$350,000

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 in Exhibit A Attachment 1.
- C. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears to:

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

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

E. Amounts Payable

The amounts payable under this agreement shall not exceed: \$6,000,000.00

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.

Exhibit B
Budget Detail and Payment Provisions

- C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 days after Contractor's receipt of the State's demand for repayment.
- D. If the Contractor has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If the Contractor loses the final administrative appeal, Contractor shall repay, to the State, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues from the Contractor's first receipt of State's notice requesting reimbursement of questioned audit costs or disallowed expenses.

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 or as set forth in Exhibit A, 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 Contractor Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH pursuant to this agreement with 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 Contractor 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 Contractor Intellectual Property; or (ii) any Contractor Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDPH's use and license of the Contractor 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 Contractor 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 Contractor Intellectual Property; or, replace or modify the licensed Contractor Intellectual Property so that the replaced or modified Contractor 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

Exhibit D

Special Terms and Conditions

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 Special Terms and Conditions 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 permitted by Contractor's licensing 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
Information Privacy and Security Requirements
(For Non-HIPAA/HITECH Act Contracts)

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

- I. Effect on lower tier transactions: The terms of this Exhibit shall apply to all contracts, subcontracts, and subawards, and the information privacy and security requirements Contractor is obligated to follow with respect to CDPH PCI disclosed to Contractor, or collected, created, maintained, stored, transmitted or used by Contractor for or on behalf of CDPH, pursuant to Contractor's agreement with CDPH. When applicable the Contractor shall incorporate the relevant provisions of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.
- II. Definitions: For purposes of the agreement between Contractor and CDPH, including this Exhibit, the following definitions shall apply:
 - A. Breach:

"Breach" means:

 1. the unauthorized acquisition, access, use, or disclosure of CDPH PCI in a manner which compromises the security, confidentiality or integrity of the information; or
 2. the same as the definition of "breach of the security of the system" set forth in California Civil Code section 1798.29(f).
 - B. Confidential Information: "Confidential information" means information that:
 1. does not meet the definition of "public records" set forth in California Government Code section 6252(e), or is exempt from disclosure under any of the provisions of Section 6250, et seq. of the California Government Code or any other applicable state or federal laws; or
 2. is contained in documents, files, folders, books or records that are clearly labeled, marked or designated with the word "confidential" by CDPH.
 - C. Disclosure: "Disclosure" means the release, transfer, provision of, access to, or divulging in any manner of information outside the entity holding the information.
 - D. PCI: "PCI" means "personal information" and "confidential information" (as these terms are defined herein:
 - E. Personal Information: "Personal information" means information, in any medium (paper, electronic, oral) that:

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

1. directly or indirectly collectively identifies or uniquely describes an individual; or
2. could be used in combination with other information to indirectly identify or uniquely describe an individual, or link an individual to the other information; or
3. meets the definition of “personal information” set forth in California Civil Code section 1798.3, subdivision (a) or
4. is one of the data elements set forth in California Civil Code section 1798.29, subdivision (g)(1) or (g)(2); or
5. meets the definition of “medical information” set forth in either California Civil Code section 1798.29, subdivision (h)(2) or California Civil Code section 56.05, subdivision (j); or
6. meets the definition of “health insurance information” set forth in California Civil Code section 1798.29, subdivision (h)(3); or
7. is protected from disclosure under applicable state or federal law.

F. Security Incident: “Security Incident” means:

1. an attempted breach; or
2. the attempted or successful unauthorized access or disclosure, modification or destruction of CDPH PCI, in violation of any state or federal law or in a manner not permitted under the agreement between Contractor and CDPH, including this Exhibit; or
3. the attempted or successful modification or destruction of, or interference with, Contractor’s system operations in an information technology system, that negatively impacts the confidentiality, availability or integrity of CDPH PCI; or
4. any event that is reasonably believed to have compromised the confidentiality, integrity, or availability of an information asset, system, process, data storage, or transmission. Furthermore, an information security incident may also include an event that constitutes a violation or imminent threat of violation of information security policies or procedures, including acceptable use policies.

G. Use: “Use” means the sharing, employment, application, utilization, examination, or analysis of information.

III. Disclosure Restrictions: The Contractor and its employees, agents, and subcontractors shall protect from unauthorized disclosure any CDPH PCI. The Contractor shall not disclose, except as otherwise specifically permitted by the agreement between Contractor and CDPH (including this Exhibit), any CDPH PCI to anyone other than CDPH personnel or programs without prior written authorization from the CDPH Program Contract Manager, except if disclosure is required by State or Federal law.

IV. Use Restrictions: The Contractor and its employees, agents, and subcontractors shall not use any CDPH PCI for any purpose other than performing the Contractor’s obligations under its agreement with CDPH.

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

- V. **Safeguards:** The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the privacy, confidentiality, security, integrity, and availability of CDPH PCI, including electronic or computerized CDPH PCI. At each location where CDPH PCI exists under Contractor's control, the Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities in performing its agreement with CDPH, including this Exhibit, and which incorporates the requirements of Section VII, Security, below. Contractor shall provide CDPH with Contractor's current and updated policies within five (5) business days of a request by CDPH for the policies.
- VI. **Security:** The Contractor shall take any and all steps reasonably necessary to ensure the continuous security of all computerized data systems containing CDPH PCI. These steps shall include, at a minimum, complying with all of the data system security precautions listed in the Contractor Data Security Standards set forth in Attachment 1 to this Exhibit.
- VII. **Security Officer:** At each place where CDPH PCI is located,, the Contractor shall designate a Security Officer to oversee its compliance with this Exhibit and to communicate with CDPH on matters concerning this Exhibit.
- VIII. **Training:** The Contractor shall provide training on its obligations under this Exhibit, at its own expense, to all of its employees who assist in the performance of Contractor's obligations under Contractor's agreement with CDPH, including this Exhibit, or otherwise use or disclose CDPH PCI.
- A. The Contractor shall require each employee who receives training to certify, either in hard copy or electronic form, the date on which the training was completed.
- B. The Contractor shall retain each employee's certifications for CDPH inspection for a period of three years following contract termination or completion.
- C. Contractor shall provide CDPH with its employee's certifications within five (5) business days of a request by CDPH for the employee's certifications.
- IX. **Employee Discipline:** Contractor shall impose discipline that it deems appropriate (in its sole discretion) on such employees and other Contractor workforce members under Contractor's direct control who intentionally or negligently violate any provisions of this Exhibit.

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

X. Breach and Security Incident Responsibilities:

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

Contractor shall take:

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

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

- C. Written Report: The Contractor shall provide a written report of the investigation to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer as soon as practicable after the discovery of the breach or security incident. The report shall include, but not be limited to, the information specified above, as well as a complete, detailed corrective action plan, including information on measures that were taken to halt and/or contain the breach or security incident, and measures to be taken to prevent the recurrence or further disclosure of data regarding such breach or security incident.
- D. Notification to Individuals: If notification to individuals whose information was breached is required under state or federal law, and regardless of whether Contractor is considered only a custodian and/or non-owner of the CDPH PCI, Contractor shall, at its sole expense, and at the sole election of CDPH, either:
1. make notification to the individuals affected by the breach (including substitute notification), pursuant to the content and timeliness provisions of such applicable state or federal breach notice laws. Contractor shall inform the CDPH Privacy Officer of the time, manner and content of any such notifications, prior to the transmission of such notifications to the individuals; or
 2. cooperate with and assist CDPH in its notification (including substitute notification) to the individuals affected by the breach.
- E. Submission of Sample Notification to Attorney General: If notification to more than 500 individuals is required pursuant to California Civil Code section 1798.29, and regardless of whether Contractor is considered only a custodian and/or non-owner of the CDPH PCI, Contractor shall, at its sole expense, and at the sole election of CDPH, either:
1. electronically submit a single sample copy of the security breach notification, excluding any personally identifiable information, to the Attorney General pursuant to the format, content, and timeliness provisions of Section 1798.29, subdivision (e). Contractor shall inform the CDPH Privacy Officer of the time, manner and content of any such submissions, prior to the transmission of such submissions to the Attorney General; or
 2. cooperate with and assist CDPH in its submission of a sample copy of the notification to the Attorney General.
- F. CDPH Contact Information: To direct communications to the above referenced CDPH staff, the Contractor shall initiate contact as indicated herein. CDPH reserves the right to make changes to the contact information below by verbal or written notice to the Contractor. Said changes shall not require an amendment to this Exhibit or the agreement to which it is incorporated.

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

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

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

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

that the CDPH PCI has been securely destroyed. The notice shall include the date and type of destruction method used.

- XV. Amendment: The parties acknowledge that federal and state laws regarding information security and privacy rapidly evolves and that amendment of this Exhibit may be required to provide for procedures to ensure compliance with such laws. The parties specifically agree to take such action as is necessary to implement new standards and requirements imposed by regulations and other applicable laws relating to the security or privacy of CDPH PCI. The parties agree to promptly enter into negotiations concerning an amendment to this Exhibit consistent with new standards and requirements imposed by applicable laws and regulations.
- XVI. Assistance in Litigation or Administrative Proceedings: Contractor shall make itself and any subcontractors, workforce employees or agents assisting Contractor in the performance of its obligations under the agreement between Contractor and CDPH, available to CDPH at no cost to CDPH to testify as witnesses, in the event of litigation or administrative proceedings being commenced against CDPH, its director, officers or employees based upon claimed violation of laws relating to security and privacy, which involves inactions or actions by the Contractor, except where Contractor or its subcontractor, workforce employee or agent is a named adverse party.
- XVII. No Third-Party Beneficiaries: Nothing express or implied in the terms and conditions of this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than CDPH or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- XVIII. Interpretation: The terms and conditions in this Exhibit shall be interpreted as broadly as necessary to implement and comply with regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of this Exhibit shall be resolved in favor of a meaning that complies and is consistent with federal and state laws and regulations.
- XIX. Survival: If Contractor does not return or destroy the CDPH PCI upon the completion or termination of the Agreement, the respective rights and obligations of Contractor under Sections VI, VII and XI of this Exhibit shall survive the completion or termination of the agreement between Contractor and CDPH.

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

Attachment 1
Contractor Data Security Standards

1. General Safeguard and Security Controls

- A. **Reasonable Care.** Contractor shall use safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of CDPH PHI, PI, and/or other confidential information to prevent use or disclosure of the information other than as provided for by this Agreement. Such safeguards shall be based on applicable Federal Information Processing Standards (FIPS) Publication 199 protection levels.
- B. **Security Framework.** Contractor shall, at a minimum, utilize an industry-recognized security framework when selecting and implementing its security controls, and shall maintain continuous compliance with its selected framework as it may be updated from time to time. Examples of acceptable industry-recognized security frameworks include but, are not limited to, the prevailing version of:
- NIST SP 800-53 – National Institute of Standards and Technology Special Publication 800-53
 - FedRAMP – Federal Risk and Authorization Management Program
- C. **Confidentiality Statement.** All persons that will be working with CDPH PCI must sign a confidentiality statement. The statement must include at a minimum, General Use, Security and Privacy safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to CDPH PCI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for CDPH inspection for a period of three (3) years following contract termination.
- D. **Workforce Member Assessment.** Before a Contractor's workforce member may access CDPH PHI, PI, and/or other confidential information, Contractor must ensure that the workforce member has been assessed to assure that there is no indication they may present a risk to the security, confidentiality, or integrity of CDPH PHI, PI, and/or other confidential information. Contractor shall retain each workforce member's assessment documentation, whether in physical or electronic format, for a period of three (3) years following contract termination.
- E. **Data Sanitization.** When CDPH PHI, PI, and/or other confidential information is no longer needed, the contract has terminated, or any retention period has expired, it must be sanitized. All electronic or physical forms of CDPH PHI, PI, and/or other confidential information must be sanitized using NIST Special Publication 800-88 standard methods for data sanitization.

2. System Security Controls

- A. **Cloud Computing.** Any cloud-based hosting solution that contains or processes CDPH PHI, PI and/or other confidential information must be Federal Risk and Authorization Management Program (FedRAMP) certified and has an Authorization To Operate (ATO).
- B. **System Inactivity.** All information systems that contain CDPH PHI, PI, and/or other confidential information must provide an automatic timeout, requiring reauthentication of the workforce member session after no more than 20 minutes of inactivity.
- C. **Warning Banners.** All information systems that contain CDPH PHI, PI, and/or other confidential information must display a warning banner each time there is an attempted logon, stating that data

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

on the system is confidential, system events are logged, and system use is for authorized purposes only. The user must be directed to cease their logon attempt and/or log off the system if they do not agree with the system usage notification.

- D. **System Logging.** All information systems that contain CDPH PHI, PI, and/or other confidential information must maintain an automated log which can identify the workforce member or system process which alters CDPH PHI, PI, and/or other confidential information. The log must record date and times, successful and failed accesses, be read only, and be access restricted to authorized workforce members. If CDPH PHI, PI, and/or other confidential information is stored in a database, database logging functionality as described above must be enabled. Log files must be archived for at least 3 years after occurrence.
- E. **Access Controls.** All information systems that contain CDPH PHI, PI, and/or other confidential information must use role-based access controls for all workforce member authentications, enforcing the principle of least privilege.
- F. **Transmission Encryption.** All data transmissions of CDPH PHI, PI, and/or other confidential information outside the Contractor's internal network must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. Encryption can be end to end at the network level, or the data files containing CDPH PHI, PI, and/or other confidential information may be encrypted in transit. This requirement pertains to any type of electronic CDPH PHI, PI, and/or other confidential information in motion such as website access, file transfer, and E-Mail.
- G. **Intrusion Detection.** All internet accessible information systems that contain CDPH PHI, PI, and/or other confidential information must be protected by a comprehensive intrusion detection and prevention solution.
- H. **Workstation/Laptop encryption.** All workstations and laptops that process and/or store CDPH PHI, PI, and/or other confidential information must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. The encryption solution must be full disk unless approved by the CDPH Information Security Office.
- I. **Database Encryption.** Databases stored on unencrypted servers or cloud solutions that contain CDPH PHI, PI, and/or other confidential information must be encrypted "at-rest" using at a minimum, file level encryption.
- J. **Server Security.** Servers containing unencrypted CDPH PHI, PI, and/or other confidential information must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- K. **Minimum Necessary.** Only the minimum necessary amount of CDPH PHI, PI, and/or other confidential information required to perform necessary business functions may be copied, downloaded, or exported.
- L. **Removable media devices.** All files that contain CDPH PHI, PI, and/or other confidential information data must be encrypted when stored on any removable media or portable device (i.e. USB drives, magnetic storage media, CD/DVD, smart devices, etc.). PHI, PI, and/or other confidential information

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

must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher

- M. **Anti-virus/anti-malware.** All information systems that process or store CDPH PHI, PI, and/or other confidential information must have an active anti-virus and/or anti-malware solution, configured to automatically update at least daily.
- N. **Patch Management.** All information systems that process and/or store CDPH PHI, PI, and/or other confidential information must have a documented patch management process and have operating system and application security patches applied within industry standard and vendor recommended timeframes.
- O. **Workforce Member Identity and Verification.** All workforce members must be assigned a unique network or information system identity and identity verification method. Identities and verifications must not be shared or transferred between workforce members and, shall be inactivated or removed from all information systems in the event of a workforce member's reassignment or departure.

3. Audit Controls

- A. **System Security Review.** All information systems that contain CDPH PHI, PI, and/or other confidential information must have an annual system risk assessment/security review. The security assessment shall include system configuration and vulnerability scanning.
- B. **System Log Reviews.** All information systems that contain CDPH PHI, PI, and/or other confidential information must have a periodic review of system logs for unauthorized access.
- C. **Change Control.** All information systems that contain CDPH PHI, PI, and/or other confidential information must have a documented change control procedure.

4. Business Continuity / Disaster Recovery Controls

- A. **Disaster Recovery.** Contractor must have a documented plan to enable continuation of critical business processes and the security of CDPH PHI, PI, and/or other confidential information should any circumstance cause normal information system or business operations to become unavailable for use in performing the work required under this agreement for more than 24 hours.
- B. **Data Backup Plan.** Contractor must have documented procedures to backup and restore CDPH PHI, PI, and/or other confidential information. Backups shall be encrypted, contain at least a weekly full backup of CDPH data and be maintained separately and securely from the production system. The plan must include periodic backup restoration testing.

5. Physical Document Controls

- A. **Supervision of Data.** CDPH PHI, PI, and/or other confidential information in physical form that is not directly observable by the workforce member who is authorized to access it, shall be placed in a locked file cabinet, file room, desk, or office. It shall not be left unattended in private vehicles or public transportation and shall not be placed in checked baggage on common carriers. Visitors to areas where CDPH PHI, PI, and/or other confidential information in physical form is handled or contained

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

shall be escorted by an authorized workforce member and CDPH PHI, PI, and/or other confidential information shall be kept out of sight while visitors are in the area.

- B. **Removal of Data.** CDPH PHI, PI, and/or other confidential information must not be removed from the authorized work locations of the Contractor except with express written permission of the CDPH Information Security and/or Privacy Office.
- C. **Faxing.** Faxes containing CDPH PHI, PI, and/or other confidential information shall not be left unattended, and fax machines shall be in secure areas. Outgoing faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them and to notify the sender of the error. Fax numbers shall be verified with the intended recipient before sending.
- D. **Mailing.** CDPH PHI, PI, and/or other confidential information in physical form shall only be mailed using secure methods using a recognized carrier. Large volume mailings of CDPH PHI, PI, and/or other confidential information in physical form shall be by a secure, bonded courier with a tracking process and signature required on receipt. Electronic media or files sent through the mail must be encrypted using an industry standard methodology.