

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

20-10866

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

Wynden Stark LLC d/b/a GQR Global Markets

2. The term of this Agreement is:

START DATE

January 12, 2021

THROUGH END DATE

June 30, 2021

3. The maximum amount of this Agreement is:

\$10,000,000.00

Ten 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
Exhibit A	Attachment I - Services Agreement	18
Exhibit B	Budget Details and Payment Provisions	3
+ - Exhibit C*	General Terms and Conditions	GTC 04/2017
+ - Exhibit D	Special Terms and Conditions	7
+ - Exhibit E	HIPPA Business Associate Addendum	14
+ - Exhibit F	Federal Emergency Management Agency Provisions	5

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.)

Wynden Stark LLC d/b/a GQR Global Markets

CONTRACTOR BUSINESS ADDRESS

1038 Princeton Drive, Suite B

CITY

Marina Del Rey

STATE

CA

ZIP

90292

PRINTED NAME OF PERSON SIGNING

Josh Redland

TITLE

Senior Vice President

CONTRACTOR AUTHORIZED SIGNATURE



DATE SIGNED

1/13/2021

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

AGREEMENT NUMBER 20-10866	PURCHASING AUTHORITY NUMBER (If Applicable)
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STATE OF CALIFORNIA

CONTRACTING AGENCY NAME California Department of Public Health			
CONTRACTING AGENCY ADDRESS 1616 Capitol Avenue	CITY Sacramento	STATE CA	ZIP 95814
PRINTED NAME OF PERSON SIGNING Tim Bow	TITLE Procurement Officer		
CONTRACTING AGENCY AUTHORIZED SIGNATURE <div>Timothy Bow</div> <div>Digitally signed by Timothy Bow Date: 2021.01.13 16:18:22 -08'00'</div>	DATE SIGNED		
CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL	EXEMPTION (If Applicable) Proclamation of a State of Emergency/Executive Order N-25-20		

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

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

Vendor shall upon Client's request for supplemental personnel ("Staff") use commercially reasonable efforts to provide Staff to Client.

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.

**2. Service Location**

The services shall be performed at various licensed health care facilities located within the State of California.

**3. Service Hours**

The services shall be provided during Normal Contractor working hours Monday through Friday.

**Project Representatives**

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

<b>California Department of Public Health</b>	<b>Wynden Stark LLC d/b/a GQR Global Markets</b>
Jennifer Hill, SSM II Fiscal Operations Section Telephone: (916) 552-8722 E-mail: <a href="mailto:Jennifer.Hill3@cdph.ca.gov">Jennifer.Hill3@cdph.ca.gov</a>	Josh Redland Telephone: 424 306 2373 E-mail: <a href="mailto:josh.redland@gqrgm.com">josh.redland@gqrgm.com</a>

B. Direct all inquiries to:

<b>California Department of Public Health</b>	<b>Wynden Stark LLC d/b/a GQR Global Markets</b>
Center for Health Care Quality Attention: Jennifer Hill, SSM II, FOS 1616 Capitol Avenue Sacramento, CA 95814 Telephone: (916) 552-822 <a href="mailto:Jennifer.Hill3@cdph.ca.gov">E-mail: Jennifer.Hill3@cdph.ca.gov</a>	Attention: Josh Redland, Senior VP Address: 1038 Princeton Drive, Suite B, Marina del Rey, CA 90292  Telephone: (424) 306-2373 Fax: E-mail: <a href="mailto:josh.redland@gqrgm.com">josh.redland@gqrgm.com</a>

Wynden Stark LLC d/b/a GQR Global Markets  
20-10866

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

Remittance Address
<b>Contractor:</b> Wynden Stark LLC d/b/a GQR Global Markets <b>Attention:</b> <a href="#">Cashier</a> <b>Address:</b> 1038 Princeton Drive, Suite B, Marina del Rey, CA 90292 <b>Phone:</b> (424) 306-2373 <b>Fax:</b> <b>E-mail:</b> <a href="mailto:ar@wyndenstark.com">ar@wyndenstark.com</a>

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.

**6. Services to be Performed**

A. Please see attached Exhibit A – Attachment I, Staffing Agreement.

**6. Vendor Requirements**

A. The vendor shall maintain data for efforts provided as required by the State. Such data may include, but is not limited to, name, type of position/certification, assigned facility address, mobilization date/start date, potential length of mobilization, state request # associated with the individual. Vendors should update this information daily and such information shall be made available to applicable federal authorities, state monitors, or their designees for review upon request.





## Exhibit A - Attachment I

**REGISTERED NURSE & ALLIED HEALTH PROFESSIONALS  
STAFFING SERVICES AGREEMENT**

This Registered Nurse & Allied Health Professionals Staffing Services Agreement (the “**Agreement**”), collectively with any applicable exhibits attached herein, is entered into by and between Wynden Stark LLC d/b/a GQR Global Markets, with its principal place of business located at 1038 Princeton Drive, Suite B, Marina del Rey, CA 90292, and applicable subsidiaries and affiliates (“**GQR**”), and the California Department of Public Health (“**Client**”) with a registered address at 1615 Capitol Ave, MS 3202, Sacramento, CA, 95814 (collectively, the “parties”), and is effective as of January 12, 2021 (the “**Effective Date**”).

WHEREAS, GQR is a global talent acquisition firm that, among other things, staffs registered nurses and healthcare professionals at healthcare organizations and facilities on a temporary basis;

WHEREAS, Client requires the services of duly licensed and qualified registered nurses and health professionals; and

WHEREAS, Client desires to engage GQR to staff registered nurses and healthcare professionals at its facilities on a temporary basis, and GQR desires to provide such registered nurses to Client in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties, in consideration of the above, and the promises and mutual covenants set forth below, and intending to be legally bound, hereby agree as follows:

**1. DEFINITIONS**

- a. “Agreement” means the terms and conditions set forth herein together with any exhibits attached hereto.
- b. “Assignment” means the specific placement to which an Assigned Employee is assigned to provide Services to Client, and the period during which he or she performs such Services for Client.
- c. “Assigned Employee” means registered nurse candidates who have accepted employment with GQR and, in GQR’s judgment, are best qualified to perform the nursing and related services requested by Client and are assigned to provide Services to Client.
- d. “Employer Obligations” means maintaining personnel and payroll records; paying Assigned Employees for all hours worked; paying, withholding and transmitting payroll taxes; establishing and contributing to such benefit programs which are either legally required or as GQR deems appropriate; making employer shared responsibility payments as required under the Affordable Care Act (“ACA”); making unemployment contributions; and handling unemployment and workers’ compensation claims.
- e. “Client” means the person, firm or corporate body together with any subsidiary or authorized agent or any other third party for whom GQR provides Staffing Services pursuant to this Agreement and attached exhibits on behalf of Client.
- f. “Data Protection Laws” means any applicable state, federal or foreign laws or regulations that relate to privacy, security, data protection and destruction, data breach notification or data transfer issues, including, without limitation, the General Data Protection Regulation (EU 2016/679) the, Health Insurance Portability and Accountability Act, the California Consumer Protection Act and all current and former privacy policies, guidelines and industry standards applicable to the Client’s business.



- g. “Site” means any Client location where Services are to be performed by an Assigned Employee.
- h. “Staffing Services” means the services to be provided by GQR for the benefit of Client pursuant to this Agreement and attached exhibits.
- i. “Services” means the nursing and related services provided to Client by Assigned Employees.

## 2. DUTIES OF GQR

- a. Provision of Staffing Services. Pursuant to the terms of this Agreement, GQR agrees to provide to Client Staffing Services generally described as follows: recruiting, interviewing and/or screening candidates to provide nursing and related services to Client; providing offers of employment to qualified registered nurse candidates when appropriate; assigning candidates who have accepted employment with GQR and, in GQR’s judgment, are best qualified to perform the nursing and related services requested by Client, and removing any Assigned Employee at the request of Client for any lawful reason. In addition, GQR will be responsible for the following with respect to the Assigned Employees: maintaining personnel and payroll records; paying Assigned Employees for all hours worked; paying, withholding and transmitting payroll taxes; establishing and contributing to such benefit programs which are either legally required or as GQR deems appropriate; making employer shared responsibility payments as required under the ACA; making unemployment contributions; and handling unemployment and workers’ compensation claims. For purposes of the ACA, GQR will treat all Assigned Employees as common-law employees of GQR. The Assigned Employee(s) will perform Services on behalf of Client at designated Sites within the United States. Assigned Employees will be eligible to participate in GQR’s benefit plans, as per Federal and State law.
- b. Workers’ Compensation Insurance. GQR will provide workers’ compensation insurance coverage for Assigned Employees, except as otherwise provided in this Agreement.
- c. Screening and Background Checks. GQR will screen Assigned Employees, in its sole discretion and in compliance with state and federal law with the following: (i) background checks, as within standard in the industry of the last seven years of residence and employment; (ii) drug screens; (iii) standard medical requirements, not limited to immunizations and physicals; (iv) license, as applicable; and (v) certifications. GQR strives to ensure top quality Assigned Employees, and such screening will provide compliance across the board. In the event that the Client warrants further screening outside of the standard herein, it will be upon mutual confirmation between both Client and GQR as confirmed within the Exhibit 3 - Credentialing Appendix to the Agreement, where applicable, and in accordance with applicable federal, state, and local law.
- d. Replacement. In the event that Client is not satisfied with the performance of any Assigned Employee, within four (4) hours of the Assigned Employee arriving on Site for a shift, and upon Client’s request, GQR will remove the Assigned Employee with whom Client is not satisfied from the Assignment, relieve Client of the obligation to pay for the number of hours worked by the same Assigned Employee for that shift, and use its best efforts to provide a replacement Assigned Employee as soon as practicable (the “Limited Warranty”). The Limited Warranty described herein shall be GQR’s sole obligation to Client and Client’s exclusive remedy with respect to any nonconformity or deficiency in services, performance, work product or deliverables furnished to Client.

## 3. DUTIES OF CLIENT

- a. Supervision. Client agrees to supervise and control the work, premises, processes and systems to be performed by Assigned Employees and Engagements, and to review and approve the corresponding work product and performance. In addition, Client will control the development,



quality and implementation of the work product and performance of Candidates on behalf of Client at designated sites within the United States. GQR is the employer of the Assigned Employees and Client is the employer for Engagements and each party will remain responsible as the employer with respect to the Employer Obligations outlined above. Client's supervision duties include ensuring that Assigned Employees receive any meal, rest or other breaks as required by law or Client policies and adequate safety precautions are taken to protect Assigned Employees from harm. In the event Client is dissatisfied with the performance or work product produced in whole or in part by any Assigned Employee, Client may request, and its sole remedy will be, the removal of such Assigned Employee in accordance with Section 2(d).

- b. Job Description. Client will provide GQR with a job description prior to the Assigned Employee commencing his or her Assignment. Client will not make material changes in any Assigned Employee's job duties or risks without GQR's prior written approval. Client will not entrust any Assigned Employee with unattended property or valuables, such as cash, negotiable instruments, keys, merchandise and confidential or trade secret information, other than as is strictly required by the job description provided to GQR. Client's breach of this duty may expose GQR to substantial and additional risk not contemplated by GQR when entering into this Agreement.
- c. Client Benefits. Client will not offer or promise any Assigned Employee compensation or benefits under any Client-provided plan, and Client will exclude Assigned Employees from any Client-provided plan whenever possible.
- d. Provision of Equipment, Supplies and Training. Client shall provide Assigned Employees with all equipment, facilities and supplies reasonably necessary for them to perform Services contemplated by this Agreement. In addition, Client shall train Assigned Employees with regard to all Client policies and procedures that may be adopted or implemented from time to time which, in Client's judgment, will enable Assigned Employees to successfully perform their specific nursing and related job duties compliance with laws, regulations and policies, including but not limited to health and safety laws and Data Protection Laws.
- e. Background Checks & Drug Screening Results. In the event that the Client requires results from the Assigned Employee's drug screening, background checks or any applicable screening; Client must directly provide notice to GQR to the following contact: [clinicalcredentialing@gqrgm.com](mailto:clinicalcredentialing@gqrgm.com). Due to privacy compliance, both at the State and Federal levels, GQR must prescribe and provide information upon authorization from Assigned Employee prior to any dispatch of results, and within applicable laws and guidelines.
- f. Suitability. Notwithstanding the Duties of GQR, the Client must satisfy itself as to the suitability of the Candidate for the position they are seeking to fill.
- g. Cancellation Fee. Unless an Exhibit A or Exhibit B provides for a different Cancellation Fee, the following Cancellation Fee(s) will apply. Prior to the Start Date, Client may cancel an Assignment or Assigned Employee for any reason within fourteen (14) days' written notice. If Client cancels an Assignment with less than seven days' written notice prior to the Start Date for any reason or cancels an Assignment after the Start Date for cause, Client shall be liable to pay the Agency a Cancellation Fee equal to forty (40) hours times the applicable billing rate for each Assigned Employee cancelled. If Client cancels, without cause, an Assignment after the Start Date, Client must provide Agency with fourteen (14) days' written notice before the requested cancellation date. Client may either a) pay a Cancellation Fee equal to fourteen (14) days of the Assignment; b) utilize Assigned Employees for the entire fourteen-day period following delivery of the written notice of cancellation and pay Agency for such work consistent with the Agreement; or c) a combination Assigned Employees and the Cancellation Fee which equals the work and fee of fourteen (14) days of the Assignment.



#### 4. MUTUAL DUTIES

- a. Cooperation. To the extent not prohibited by law, the parties agree to cooperate fully and to provide assistance to each other in the investigation and resolution of any complaints, claims, actions or proceedings which may be brought by or involve any Assigned Employee.
- b. Safety and OSHA Compliance. Client will provide all on-Site Assigned Employees with a safe worksite and will provide information, training and safety equipment with respect to any hazardous substances or conditions to which Assigned Employees may be exposed at the worksite, whether or not required by law. Without limiting the generality of the foregoing, because Client controls the facilities in which Assigned Employees work, it is agreed that Client is primarily responsible for compliance with the Occupational Safety and Health Act and comparable state laws and regulations thereunder, to the extent those laws apply to Assigned Employees working at Client's facilities. GQR will, at the request of Client, instruct its employees on general safety matters in accordance with information provided to GQR by Client.
- c. Notification of Complaints and Incidents. To the extent not prohibited by law, the parties agree to inform each other of all formal and informal complaints, allegations, accidents, or incidents relating to any Assigned Employee's misconduct or workplace safety violation of which the either party becomes aware, regardless of the source, including, but not limited to, any incident that may reasonably lead to a malpractice claim, criminal or civil penalties, or disciplinary action against any Assigned Employee, or Client in connection with any Assigned Employee provided by GQR, and any allegations of sexual harassment, discrimination, violations of the Occupational Safety and Health Act, or threats of violence. To the extent commercially reasonable, and not prohibited by law, each party shall provide a complete and accurate disclosure of all circumstances surrounding such matters. The parties agree not to engage in any conduct that could reasonably be considered retaliation in violation of laws or regulations, including but not limited to removal or replacement of a Candidate or Assigned Employee or other adverse action, as a result of a good faith complaint.
- d. Confidentiality. Both parties acknowledge that they may receive information that is proprietary or confidential to the other party or its affiliated companies and their clients. Both parties agree to hold such information in strict confidence and not to disclose such information to third parties or to use such information for any purpose whatsoever other than performing hereunder or as required by law. All information relating to a Candidate is confidential and subject to applicable Data Protection Laws and is provided solely for providing work-finding services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client always undertakes to abide by the provisions of all applicable Data Protection Laws in receiving and processing the data. Due to the nature of confidential information, this provision survives termination of the Agreement.
- e. Compliance with Law. GQR shall comply with all applicable federal, state and local laws and regulations governing the provision of Services, including with respect to the provision of such services in the healthcare industry, and GQR's business generally. Client shall comply with all applicable federal, state, and local laws and regulations governing the work product, performance of work by Assigned Employees and the Client's business generally. GQR will maintain in effect during the term of this Agreement any and all federal, state and/or local licenses and permits that may be required of staffing employers generally, and staffing employers that provide registered nurses to healthcare organizations and facilities. Client will maintain at its expense such licenses and permits as may be required by applicable authorities in order to engage in Client's business, and if GQR is requested to obtain these types of permits and/or licenses on behalf of Client, the cost thereof will be billed to Client. The parties agree to comply with all applicable Data Protection Laws.
- f. COVID-19 Liability for Traveling Assigned Employees & Testing. No Assigned Employee will be allowed to work who shows signs or symptoms of a contagious disease that may endanger the



residents, patients, or other employees at the Site. This includes, but is not limited to, COVID-19. GQR will communicate to Assigned Employee(s) that upon arrival on-Site, they will be tested for COVID-19 by the Client, and if such Assigned Employee tests positive, then Client will notify GQR of such result. Any Assigned Employee who tests positive for COVID-19, and who showed signs or symptoms prior to arriving on-Site, will be denied work and GQR will be responsible for the costs of their quarantine and return travel. In the instance where the Assigned Employee showed no symptoms of COVID-19, arrived on-Site, and tested positive for COVID-19, Client will be responsible for the costs associated with lodging for up to 10 days of quarantine and return travel. Any Assigned Employee who contracts COVID-19 during the course of an Assignment will be removed from the Assignment and cost of lodging for up to 10 days of quarantine and return travel will be paid by Client. GQR will use reasonable efforts to identify a replacement for any such Assigned Employee that is unable to work due to a COVID-19 positive test result. GQR will only be responsible for any costs associated with the quarantine and return travel if the Assigned Employee fails to disclose showing signs or symptoms and tests positive for COVID-19 upon arrival on-Site. Client is to notify GQR of any Assigned Employee unable to work due to positive test results immediately and in good-faith. This is specific to Assigned Employees who are on contract and are traveling to Site, and only if applicable.

## 5. PAYMENT

- a. Payment. Client agrees to pay GQR for its performance hereunder at the rates set forth on Exhibit A or Exhibit B, and also agrees to pay any additional costs or fees set forth in this Agreement or Exhibit A or Exhibit B. Client understands and acknowledges that such rates include payroll costs, which represent the allocated share of estimated Employer Obligations as defined above. GQR will invoice Client weekly via electronic mail at [CHCQEMERGENCYINVOICES@cdph.ca.gov](mailto:CHCQEMERGENCYINVOICES@cdph.ca.gov). Payment will be due within fourteen (14) days upon receipt of invoice. Amounts invoiced for work performed by Assigned Employees will be calculated on the basis of hours shown on GQR time slips. Client or Client's designated representative will approve GQR time slips, certifying that the hours shown are correct and authorizing GQR to bill Client for the hours worked by the named Assigned Employee. If Client or Client's designated representative are unavailable to approve time slips, GQR is authorized to approve such time slips and such signed time slips will be conclusive as to the number of compensable hours worked by each Assigned Employee for that workweek, provided that Client will have thirty (30) days to contest any inaccuracies in such time slips. Client agrees that it will not request or require that Assigned Employees work any hours not recorded on a time slip.
- b. Additional Payment Terms.
  - (1) Rate Increases. If GQR is required to increase wage and/or payroll costs at any time during the term of this Agreement as the direct result of any determination, order or action by any applicable federal, state or local governmental authority including prevailing wage and benefit requirements, or in order to meet Employer Obligations, Client will reimburse GQR at cost for any such increase or equitable adjustment. Client agrees to notify GQR immediately whenever any Assigned Employee will perform work pursuant to a government contract covered by the Service Contract Act of 1965, the Davis Bacon Act and Related Acts or any applicable federal, state or local governmental requirement and to pay GQR the price differential or equitable adjustment associated with any wage determinations under such government contract.
  - (2) Payment for Overtime. If Assigned Employees work overtime under applicable federal or state law, Client agrees to pay GQR for the additional overtime hours at a rate of one and one-half times the Assigned Employee's regular rate of pay. In jurisdictions in which other overtime or double-time obligations are imposed by statute or regulation, GQR will bill at the bill rate for overtime that GQR is required to pay its employees pursuant to applicable law. Any hours required to be paid at premium rates will be included on GQR time slips





and approved in accordance with Section 5(a) above.

- (3) Payment for Orientation or Required Training. In the event as part of an Assignment an Assigned Employee is required to attend Client mandated new hire orientation or required training courses, the rate shown on Exhibit A or Exhibit B shall apply, and such orientation rates will be paid by GQR and reimbursed to GQR by Client at GQR's actual cost. New hire orientation must be related to an Assigned Employee's Assignment with Client and scheduled during normal business hours.
  - (4) Sales Tax. Any sales, use, excise, or other such tax levied as a result of performance hereunder will be paid by Client.
  - (5) Rate Sheets. A rate sheet may be provided upon written and mutual agreement, as highlighted in Exhibit B. As per negotiations, rates may increase may be administered and only upon written agreement between both parties. Any changes will be highlighted and enforced as part of this Agreement.
  - (6) COVID-19 Leave. In the event that Assigned Employee is exhibiting symptoms or tested positive related to COVID-19, and/or must care for an individual who is experiencing such symptoms; the Assigned Employee may have to take leave under the Families First Coronavirus Response Act ("FFCRA") which went into effect on April 1, 2020 and terminate on December 31, 2020. The health of the Assigned Employee is of utmost importance, and as such GQR will be administering any leave under FFCRA as per state compliance. Notice must be given by Assigned Employee to both Client and GQR with details on leave. GQR will be in touch upon any changes with leave as communicated by Assigned Employee. All Assigned Employees are required to send authorization forms for leave under FFCRA to GQR.
  - (7) Late Payment Interest . GQR reserves the right to charge interest on invoiced amounts unpaid by the due date at a rate equal to the lesser of (a) 5% per annum above the Wall Street Journal Prime Rate in effect as of the due date for such invoiced amounts or (b) the maximum interest rate permitted under applicable law, from the due date until the date of payment.
- c. Conversion. In the event that a Client hires any Assigned Employee as Client's employee, engages any Assigned Employee as an independent contractor, or permits any Assigned Employee to transfer to another entity's payroll in order to perform work for Client or at Client's facilities, Client will pay to GQR, within thirty (30) days from receipt of invoice, a conversion fee equal to 30% of first year total Compensation. "Compensation" means and includes gross base salary, wages or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car, bonus buy-outs, dividends, profit shares, stock, stock options, stock buy-outs and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Candidate for services rendered to or on behalf of the Client or any third party.

## 6. TERM AND TERMINATION

- a. Term. This Agreement will be for a term of one (1) year from the Effective Date of this Agreement. This Agreement will automatically renew for successive one (1) year terms, unless either party provides notice not later than thirty (30) days prior to expiration of the then-current term of its intent to no longer renew this Agreement.
- b. Termination for Cause. Notwithstanding any other provision of this Agreement, either party may terminate this Agreement immediately in the event the other party declares or becomes bankrupt or insolvent, dissolves or discontinues operations, materially breaches this Agreement, or fails to



make any payments within the time periods specified in this Agreement.

- c. Effect of Termination. Upon termination of this Agreement, GQR will promptly provide an invoice to Client for all fees incurred by Client under this Agreement. Client will pay all amounts set forth on the invoice within thirty (30) days of receipt.
- d. Client Options upon Termination. Notwithstanding any other provision of this Agreement, if Client terminates this Agreement but desires to have any Assigned Employees continue to provide services at Client's facilities, Client may elect one of the following two options on or before the effective termination date:
  - (1) To pay GQR no later than ten (10) days after the effective termination date the conversion fee set forth on Exhibit A or Exhibit B for each Assigned Employee then assigned to Client, with the understanding that such Assigned Employee will be engaged by Client as an independent contractor, hired directly by Client, or transferred to or placed on the payroll of any other firm or person and who continues to perform services for Client or at Client's facilities; or
  - (2) Upon GQR's written consent, to continue to pay GQR in accordance with the payment procedures in Section 5 for such Assigned Employee's services at GQR's billing rate in effect at the time of the termination for any services performed by such Assigned Employee for a one-year period following the cancellation of this Agreement.

## 7. INDEMNIFICATION AND LIMITATION OF LIABILITY

- a. Intentionally Omitted.

## 8. INSURANCE

- a. GQR Insurance. After the execution of this Agreement, and upon Client's request, GQR will deliver to Client copies of certificates of the insurance policies described below. GQR will maintain all such insurance policies in full force and effect at all times during the performance of this Agreement.
  - (1) Workers' Compensation Insurance with statutory limits and Employer's Liability Insurance with limits of at least \$1,000,000 for each accident or disease.
  - (2) Comprehensive General Liability and Property Damage Insurance, including coverage for products and completed operations, with limits of at least \$1,000,000 for each occurrence.
  - (3) Specified Medical Professions Professional Liability Insurance – Claims Made Coverage with limits of at least \$2,000,000 per claim, and at least \$4,000,000 aggregate.
  - (4) Umbrella Coverage with limits of at least \$5,000,000 per occurrence following the forms of the underlying insurance policies.
- b. Insurance of GQR Subcontractors. GQR will require all its secondary vendors to carry, at a minimum, Worker's Compensation Insurance as required by the states in which they operate, Comprehensive General Liability and Property Damage Insurance, and Excess or Umbrella Coverage, in accordance with GQR's sub-vendor program requirements. In the event that Client requires GQR to use a designated subcontractor, GQR shall not be responsible for any liability.

## 9. LIMITED WARRANTY

- a. Limited Warranty. GQR provides Services as described above and not the work product or



deliverables provided by its Assigned Employees or Candidates. The Limited Warranty described in above shall be GQR's sole obligation to Client and Client's exclusive remedy with respect to any nonconformity of or deficiency in services or work furnished to Client.

- b. Disclaimer. **THE LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WRITTEN, ORAL OR IMPLIED; AND ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.**

## 10. MISCELLANEOUS

- a. Use of Marks. For the purposes of this Agreement, Client hereby grants to GQR a non-exclusive, non-transferable, revocable license to use Client's trademarks, trade names and service marks, agency seals or similar logos used and/or owned by Client with respect to the Product (collectively, the "Marks"). The Marks shall be used by GQR solely in its discretion in connection with its activities conducted under this Agreement or advertising and promotion of its business by placing on its corporate website, the Mark of the Client, which shall function as an uninterrupted hyper-link to Client's corporate web site home page (or other page designated the Client), in each case solely in accordance with the terms hereof. The ownership of and goodwill in all Marks shall remain the sole and exclusive property of Client and inure exclusively to Client's sole benefit, both during the Term and thereafter. GQR agrees that nothing in this Agreement shall give GQR any right, title or interest in or to the Marks other than the right to use the same in the manner contemplated by this Agreement.
- b. Press Release & Publicity: Prior to any issuance of any press release announcing the partnership, GQR shall obtain confirmed authorization and consent of Client. Neither Party shall make any public announcement or statement that is inconsistent with or contrary to the terms of this Agreement. All Press Material will be done in good faith and will only be issued upon written consent and review by either Party, and the consent of which will not be unreasonably withheld.
- c. Survival of Certain Provisions. Except as expressly set forth herein, those provisions of this Agreement which by their terms extend beyond the termination or non-renewal of this Agreement will remain in full force and effect and survive such termination or non-renewal.
- d. Severability. Each provision of this Agreement will be considered severable such that if any one provision or clause conflicts with or may not be given full effect because of existing or future applicable law, this will not affect any other provision which can be given effect without the conflicting provision or clause.
- e. Entire Agreement. This Agreement and the Exhibits attached hereto contain the entire understanding between the parties, and supersede all prior agreements and understandings relating to the subject matter hereof. No provision of this Agreement may be amended or waived unless such amendment or waiver is agreed to in writing signed by both parties. Client represents that in executing this Agreement, Client did not rely on any inducements, promises or representations by GQR other than the terms specifically set forth in this Agreement.
- f. Exhibits. All exhibits attached to this Agreement will be deemed a part of this Agreement and incorporated herein by reference. The term "Agreement" includes the exhibits attached to this Agreement. Terms, which are defined in this Agreement and used in any exhibit, will have the same meaning in the exhibit as in this Agreement. In the event of any conflict between any exhibit and this Agreement, this Agreement will control.
- g. Headings. The headings of the Sections of this Agreement are inserted solely for the convenience of reference. The headings will in no way define, limit, extend or aid in the construction of the scope,





extent or intent of this Agreement,

- h. Waiver. The failure of a party to enforce the provisions of this Agreement will not be construed as a waiver of any provision or the right of such party thereafter to enforce any provision of this Agreement.
- i. Transferability. Neither party may, directly or indirectly, in whole or in part, neither by operation of law or otherwise, assign or transfer this Agreement or delegate any of its obligations under this Agreement without the other party's prior written consent. Any attempted assignment, transfer or delegation without such prior written consent will be void and unenforceable. Notwithstanding the foregoing, GQR, or its permitted successive assignees or transferees, may assign or transfer this Agreement or delegate any rights or obligations hereunder without consent:(1) to any entity controlled by, or under common control with, GQR, or its permitted successive assignees or transferees; or (2) in connection with a merger, reorganization, transfer, sale of assets or product lines, or change of control or ownership of GQR, or its permitted successive assignees or transferees. Without limiting the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their permitted successors and assigns.
- j. Subcontracting and Service by Franchises. GQR may subcontract any of its obligations hereunder to secondary vendors. GQR franchises may perform a part of GQR's obligations hereunder.
- k. Books and Records. As applicable, and consistent with Section 420.302(b) of the Medicare regulations or other inspection state or federal laws, until the expiration of four years after the furnishing of the services provided under this Agreement, Agency will make available to the Secretary, U.S. Department of Health and Human Services, the U.S. Comptroller General, and their representatives, this Agreement and all books, documents and records necessary to certify the nature and extent of the costs of those services.
- l. Ambiguities and Advice. The rule of construction that ambiguities in an agreement are to be construed against the drafter will not be invoked or applied in any dispute regarding the meaning or interpretation of any provision of this Agreement. Client acknowledges that GQR does not provide legal or tax advice.
- m. Counterparts and Electronic Signatures. The parties may execute this Agreement in any number of duplicate originals and through electronic signatures, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signature of all the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page, whether a handwritten signature or an electronic signature, is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement.
- n. Independent Contractor. Nothing contained in this Agreement will be construed to create the relationship of principal and agent, or employer and employee, between GQR and Client.
- o. Notices. All notices which are required to be given in accordance with this Agreement shall be in writing and may be delivered personally, or by certified mail, postage prepaid, email or facsimile transmission. Any such notice shall be deemed to have been served: if by hand, when delivered, if by certified mail, 48 hours following the mailing date and, if by email or facsimile transmission, when that email or facsimile is sent. Such communications must be sent to the respective parties at the following addresses (or any other address that a party has notified the other party of in writing):

If to GQR:

**ATTN: Legal & Compliance Department**  
[terms@gargm.com](mailto:terms@gargm.com)



1038 Princeton Drive, Suite B  
Marina del Rey, CA 90292

If to the Client:

California Department of Public Health  
1615 Capitol Ave, MS 3202  
Sacramento, CA, 95814

Client Invoices emailed to: [CHCQEMERGENCYINVOICES@cdph.ca.gov](mailto:CHCQEMERGENCYINVOICES@cdph.ca.gov)

- p. Force Majeure. Neither party will be responsible for failure or delay in performance hereunder if the failure or delay is due to labor disputes, strikes (including but not limited to strikes of Client and/or GQR), fire, riot, war, terrorism, pandemic, acts of God or any other causes beyond the control of the non-performing party.
- q. Choice of Law, Venue and Attorney's Fees. This Agreement will be governed in all respects, including validity, construction, interpretation and effect by the laws of the State of California without regard to its conflicts of law principles. The parties hereto consent to the jurisdiction of any state or federal court in California for the resolution of any dispute arising from this Agreement. In the event that either Agency or Client institutes any legal suit, action, or proceeding, including arbitration against the other to enforce the covenants contained in this Agreement, or obtain any other remedy in respect of any breach of this Agreement, the prevailing party in the suit, action or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action, or proceeding, including actual attorneys' fees and expenses and court costs.
- r. Due Authority. Each party hereto represents and warrants that it has all necessary authority, power and right necessary to enter into and bind it, its principals, agents and employees to the terms of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by authorized signatories of GQR and Client on the dates set forth below.

California Department of Public Health

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Wynden Stark LLC dba  
GQR Global Markets

  
\_\_\_\_\_  
Signature

Josh Redland  
\_\_\_\_\_  
Printed Name

SVP  
\_\_\_\_\_  
Title

1/13/2021  
\_\_\_\_\_  
Date



## SAMPLE EXHIBIT A – ASSIGNED EMPLOYEE

This “Exhibit A” is entered into on January 12, 2021 by and between Wynden Stark LLC d/b/a GQR Global Markets with its principal place of business located at 1038 Princeton Avenue, Marina del Rey, CA 90292, and applicable subsidiaries and affiliates (“**GQR**”) and California Department of Public Health with a registered address at 1615 Capitol Ave, MS 3202, Sacramento, CA, 95814 (“**Client**”) (collectively, the “parties”). In consideration of the mutual covenants contained herein, and in the Registered Nurse & Allied Health Professionals Staffing Services Agreement (the “**Agreement**”), the parties agree to the additional terms and conditions set forth below. All defined terms used in this Exhibit A and not otherwise defined shall have the same meaning as set forth in the Agreement.

### 1.0 REQUIRED DELIVERABLES, SERVICES & APPLICABLE FEES:

GQR agrees to provide Assigned Employees for, and Client agrees to pay, the rates listed below in Table #1.1.

#1.1	Corresponding Fee
Straight time bill rate	[1.65]x hourly pay rate agreed at [RATE].
Overtime bill rate	[1.5]x “straight time bill rate” for any overtime worked

### 2.0 DESCRIPTION OF SERVICES:

Name of Assigned Employee:

Job Role:

Location:

Start Date:

End Date:

Bill Rate: confirmed above

Supervisor Contact Details:

(If applicable) Weekly Non-Taxable Living Allowance:

*This allowance will be pro-rated based on days worked for the first and last week of the contract term herein.*

### 3.0 ADDITIONAL EXPENSES:

#### 3.1 General Rule

As a general rule, the parties expect and agree that all expenses and costs of GQR are accounted for, and included within, the fees listed above.

#### 3.2 Travel Expenses & Additional Requirements

In the event that an Assigned Employee is required to incur travel and/or lodging expenses in connection



with an Assignment, such expenses will be paid by GQR, and reimbursed to GQR by Client.

### 3.3 Background Checks & Additional Screening

GQR's costs for requested and/or legally mandated drug-testing, background, and security checks for GQR employees as they relate to Services to be performed under the Agreement will be absorbed by GQR, and upon written request by Client.

Where applicable, please refer to the Credentialing Appendix to the Agreement for any alternative requirement to GQR's baseline requirements as proposed by Client, and confirmed by both Parties in compliance with Section 2 (c) of the Agreement and the Appendix.

#### SIGNATURES:

**IN WITNESS WHEREOF**, the parties to the above-referenced Agreement have caused this Exhibit A to be executed by their authorized representatives.

**California Department of Public Health**

\_\_\_\_\_  
Signature

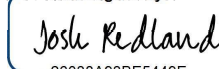
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Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Wynden Stark LLC dba**

**GQR Global Markets**

  
\_\_\_\_\_  
Signature

**Josh Redland**

\_\_\_\_\_  
Printed Name

**SVP**

\_\_\_\_\_  
Title

**1/13/2021**  
\_\_\_\_\_  
Date



**EXHIBIT B  
RATE SHEET**

This “Exhibit B” is entered into on January 12, 2021 by and between Wynden Stark LLC d/b/a GQR Global Markets with its principal place of business located at 1038 Princeton Avenue, Marina del Rey, CA 90292, and applicable subsidiaries and affiliates (“**GQR**”) and California Department of Public Health with a registered address at 1615 Capitol Ave, MS 3202, Sacramento, CA, 95814 (“**Client**”) (collectively, the “parties”). In consideration of the mutual covenants contained herein, and in the Registered Nurse & Allied Professionals Staffing Services Agreement (the “**Agreement**”), the parties agree to the additional terms and conditions set forth below. All defined terms used in this Exhibit B and not otherwise defined shall have the same meaning as set forth in the Agreement.

1. Applicability. This “Exhibit A” applies to Assignments using Assigned Employees. All defined terms used in this Exhibit A and not otherwise defined shall have the same meaning as set forth in the Agreement.
2. Definitions.

<b>Base Hourly Rate</b>	Means the bill rate listed in Section 3 below.
<b>Holiday</b>	Means New Year's Eve Day, New Year's Day, Easter Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Day After Thanksgiving, Christmas Eve Day, Christmas Day and any additional holidays for Client employees (e.g. Good Friday). A holiday begins at 12:00 a.m. on the day of the holiday and ends at 11:59:59 p.m. on the day of the holiday.
<b>Hourly Rate</b>	Means the bill rate confirmed for the hour to GQR, who is the Agency in this transaction, which may include Base Hourly Rate increases for certain rates (e.g., Incentive Rate and/or Supervisor Rate) or Base Hourly Rate decreases for certain rates (e.g., On Call). This hourly rate is inclusive of workers compensation and insurance rates.
<b>Hours Worked</b>	Means the greater of the number of hours scheduled to work or the hours actually worked within GQR's systems or actual hours worked whichever is greater, and includes paid meal and rest breaks. An Assigned Employee's hours for Paid time off or paid sick leave (e.g. COVID quarantine) are not counted in Hours Worked; however, where applicable in this Agreement are still billed to Client by Agency.
<b>Overtime</b>	Means more than forty (40) Hours Worked in one week or any amount greater as may be required by state or local law or as the Agreement provides to pay overtime to Assigned Employees (e.g., more than 8 hours a day in California). Paid holidays, paid time off, or sick leave are not counted in computing overtime hours.
<b>Regular Rate</b>	Means the default rate for an Assignment. The Base Hourly Rate will be the Regular Rate unless an Assignment or Assigned Employee's rate requires a Critical Need Rate or Incentive Rate.
<b>Week or Workweek</b>	Means Monday from 12:00 a.m. – Sunday 11:59:59 p.m.



### 3. Rates.

- a. General Rate. GQR agrees to provide Assigned Employees for, and Client agrees to pay, the rates listed below in the Table.

Price per Assigned Employee	ICU RN	ED RN	Med/Surg Telemetry RNs	Med/Surg Non-Telemetry RNs
Base Hourly Rate	\$220.00	\$200.00	\$180.00	\$180.00

- b. Overtime Rate. Client agrees to pay 1.5 times the applicable rate set forth above for all hours worked by Assigned Employees that are more than 40 hours in a Workweek or any amount greater as required by applicable state or local law to pay overtime to Assigned Employees. For example, a California worker who works 13 hours in a day may be required to receive 2.0 times the applicable rate for hours over 12.
- c. Holiday Rate. Client agrees to pay 1.5 times the applicable Hourly Rate for all Holiday hours worked.
- d. Supervisory Rate. If Assigned Employee is required to perform supervisory or team lead duties during an Assignment, Client agrees to pay an additional \$25.00/hr. above the applicable rate to the Assigned Employee.
- e. On Call or Call Back Rate. Client agrees for hours where Assigned Employee is not required to stay on the Client's site but has uncontrolled on call hours ("On Call") to pay GQR at a rate of \$12.00 per hour. If an Assigned Employee who is On Call is called back to the Client's site, the On Call rate ends upon such call back, and the Client agrees to pay GQR a minimum of two hours and a maximum of all hours worked for that Assigned Employee's shift at a rate of pay of 1.5 times the applicable rate set forth above. Client agrees for hours where an Assigned Employee is required to stay on at a Site, the applicable rate is the Base Hourly Rate plus any applicable increases for all hours the Assigned Employee is on Site.

### 4. Additional Terms.

- a. General Rule. As a general rule, the parties expect and agree that all expenses and costs of GQR are accounted for, and included within, the fees listed above.
- b. Additional Requirements. In the event that an Assigned Employee is required to incur travel and/or lodging expenses in connection with an Assignment, such expenses will be paid by GQR, and reimbursed to GQR by Client at GQR's cost.
- c. Background Checks. GQR's costs for requested and/or legally mandated drug-testing, background, and security checks for GQR employees as they relate to Services to be performed under the Agreement will be absorbed by GQR, and upon written request by Client.
- d. Assignment Length. The length of the Assignment will be for no less than ten (10) weeks. This applies to all work weeks, including but not limited to weeks where a unit may have a partial week closure. If Client cannot fill the Assignment Length requirement, Client shall nonetheless pay Agency for the full ten (10) weeks.



- e. Minimum Work Week. For Assignments that are confirmed to have for eight, ten, or any combination of eight, ten, and twelve-hour shifts, Client shall provide such Agency a minimum of 36 scheduled hours per each weekly payroll period for each Assigned Employee at his or her applicable rate above. For 12-hour shifts, Client shall provide Agency a minimum of 36 scheduled hours per each weekly payroll period for each Assigned Employee at his or her applicable rate above. This minimum work week applies to all work weeks, including but not limited to weeks where a unit may have a partial week closure. The calculation of the minimum work week includes all hours planned for each Assigned Employee except for On Call time. If Client cannot fill the minimum work week requirement, Client shall nonetheless pay Agency for the minimum.
- f. Client to Provide Minimum Roles. Client to provide to Agency no less than one hundred (100) registered nurse open role requirements.

California Department of Public Health

\_\_\_\_\_  
Signature

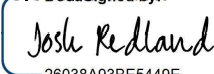
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Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Wynden Stark LLC dba

GQR Global Markets

  
26038A03BE5440E

\_\_\_\_\_  
Signature

Josh Redland

\_\_\_\_\_  
Printed Name

SVP

\_\_\_\_\_  
Title

1/13/2021

\_\_\_\_\_  
Date



**EXHIBIT 3 - CREDENTIALING APPENDIX**  
**WYNDEN STARK LLC DBA GQR GLOBAL MARKETS**  
**CREDENTIALING APPENDIX TO REGISTERED NURSE & ALLIED HEALTH PROFESSIONALS**  
**STAFFING SERVICES AGREEMENT**

**Instructions:** This Appendix confirms the background and medical checks undertaken by GQR for every Assigned Employee on Assignment with Client. Where Client requires such checks to differ from the GQR Baseline Requirements as confirmed below, Client must check the box under "Other" and input detailed information under "Alternative Requirement". If Client does not select an Alternative Requirement then Client agrees that the Baseline Requirement is sufficient for the job description and/or Assignment. If Client has no Alternative Requirements Client must acknowledge Baseline Requirements are sufficient by providing signature at the bottom of the Appendix. Any Alternative Requirement proposed by Client shall not be deemed agreed to be provided by GQR unless this Appendix has been fully executed by both parties. Further, GQR and Client may mutually agree that any Alternative Requirement may be not be performed by GQR and instead by Client at Client's location and Client's expense. Following the completion of the Appendix by Client, GQR's Clinical team shall be in touch to discuss Alternative Requirements, if any.

**\*\*Please note that Alternative Requirements may delay start dates and/or onboarding of candidates. Such delays shall be communicated and confirmed with Client.\*\***

GQR Baseline Requirements	Frequency/Notes	Other	Alternative Requirement
<b>RN, LPN, CNA Licensure</b>			
Verified and hard copy on file	Will be verified through Board of Nursing website within 30 days of start date. Hard copy will be on file, if issued by the state		
<b>Certifications</b>			
BLS	AHA, Red Cross, electronic card is fine or actual card front/back must be signed		
<b>Medical Requirement</b>			
Drug Screen	10 panel within 30 days of initial start date - required annually		
Hepatitis B: Declination	Declination required upon hire and rehire		
Rubeola: 2 vaccines OR titer	2 MMR vaccines or positive Rubeola titer. But if the titer is negative, no need for booster per CDC.		
Rubella: 2 vaccines OR titer	2 MMR vaccines or positive Rubella titer. But if the titer is negative, no need for booster per CDC.		
Mumps: 2 vaccines OR titer	2 MMR vaccines or positive Mumps titer. But if the titer is negative, no need for booster per CDC.		
Physician's statement/Physical	Required Annually; must state able to perform job duties without restrictions. Free from communicable diseases		
PPD, TB, titer, OR T-spot	Required annually; Negative or MM reading required		



IF positive PPD			
Chest X-Ray (CXR)	CDC does not recommend annual or every 5 Year. Within the last 7-10 years.		
PPD Questionnaire: w/n a year of start date	Required annually		
Background check: National search, county resided, and employment of last 7 years	30 days of start date required every 3 years unless break of employment of 45 days or more		
Skills checklist and References (for assignment skill set)	Skills checklist updated annually and 2 references within 1 year		
Job Description	RN, CNA or LPN		
Knowledge exam	Expires 2 years after date complete		
OSHA	Expires 1 year after date complete		
Medication Exam for RN	Expires 2 years after date complete		
HIPAA	Updated annually		
NSO – Sex offender	30 days of start date		
OIG	30 days of start date		
SAM	30 days of start date		
State specific checks	30 days of start date		

If you have other requirements not listed above, please state these below. GQR will endeavor to meet these, but it may not always be possible. **If you do not have any further requirements, please input N/A in the box below.** Please reach out to our clinical team [clinicalcredentialing@gqrgm.com](mailto:clinicalcredentialing@gqrgm.com) if you have further questions.

**Additional requests/comments:**

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This Credentialing Appendix forms part of the Registered Nurse & Allied Health Professionals Staffing Services Agreement (the “**Agreement**”). The Alternative Requirements, if any, outside of Baseline Requirements and contained therein will only be met by GQR upon full and explicit execution of this document by both parties.

**IN WITNESS WHEREOF**, the parties to the above-referenced Agreement have caused this Appendix to be executed by their authorized representatives.

**CLIENT**

**Wynden Stark LLC dba  
GQR Global Markets**

DocuSigned by:  
*Josh Redland*  
20030A5330E5449E...

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

**Josh Redland**  
\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**SVP**  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**1/13/2021**  
\_\_\_\_\_  
Date

**Exhibit B**  
**Budget Details and Payment Provisions**

**1. Invoicing and Payment**

- A. In no event shall the Contractor require reimbursement from the State for obligations entered into 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 Time and Materials based on the hourly rate identified in this attachment under the Rates Payable provision.
- C. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears to:

[CHCQEmergencyInvoices@cdph.ca.gov](mailto:CHCQEmergencyInvoices@cdph.ca.gov)

Please include Contract# 20-10866 in your email submission.

- D. Electronic Submission:  
The State, at its discretion, may designate an alternate invoice submission address. A change in invoice address shall be accomplished via a written notice to the Contractor by State and shall not require an amendment to this agreement.
- E. Invoices shall be accompanied by an itemized invoice, as identified in Attachment A – SOW and contain the following:
  - 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 expenditure claimed represent activities performed and are in accordance with Attachment A-SOW.
  - 2) Invoices must be submitted to CDPH either electronically or in hardcopies.
  - 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 the CDPH.

**F. Amounts Payable**

The amounts payable under this agreement are outlined in Exhibit A, Attachment I and shall not exceed \$10,000,000.00.

**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.

**Exhibit B**  
**Budget Details and Payment Provisions**

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

**3. Prompt Payment Clause**

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

**4. Timely Submission of Final Invoice**

- A. A final undisputed invoice shall be submitted for payment no more than 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.

**Exhibit B**  
**Budget Details and Payment Provisions**

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

## 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



## **Exhibit D**

### **Special Terms and Conditions**

Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to CDPH to any work product made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.

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

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

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

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

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

#### **F. Warranties**

- 1) Contractor represents and warrants that:
  - a. It is free to enter into and fully perform this Agreement.
  - b. It has secured and will secure all rights and licenses necessary for its performance of this Agreement.
  - c. Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.

## **Exhibit D**

### **Special Terms and Conditions**

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

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

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

## **Exhibit D**

### **Special Terms and Conditions**

or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, CDPH shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.

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

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

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

#### **I. Survival**

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

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

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

## **Exhibit D**

### **Special Terms and Conditions**

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

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

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

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

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

**Attachment E**  
**HIPAA Business Associate Addendum**

**I. Recitals**

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

**II. Definitions**

- A.** Breach shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- B.** Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- C.** Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- D.** Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C section 17921 and implementing regulations.
- E.** Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR part 160.103.

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**HIPAA Business Associate Addendum**

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

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

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

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

**Attachment E**  
**HIPAA Business Associate Addendum**

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

**B. Prohibited Uses and Disclosures**

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

**C. Responsibilities of Business Associate**

Business Associate agrees:

1. ***Nondisclosure.*** Not to use or disclose PHI other than as permitted or required by the Agreement or as required by law.
2. ***Safeguards.*** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of CDPH, in compliance with 45 CFR parts 164.308, 164.310 and 164.312, and to prevent use or disclosure of PHI other than as provided for by the Agreement. Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR part 164, subpart C, in compliance with 45 CFR part 164.316. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section 3, Security, below. Business Associate will provide CDPH with its current and updated policies.

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**HIPAA Business Associate Addendum**

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

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

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

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

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



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1. To provide access as CDPH may require, and in the time and manner designated by CDPH (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to CDPH (or, as directed by CDPH), to an Individual, in accordance with 45 CFR section 164.524. Designated Record Set means the group of records maintained for CDPH that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for CDPH health plans; or those records used to make decisions about individuals on behalf of CDPH. Business Associate shall use the forms and processes developed by CDPH for this purpose and shall respond to requests for access to records transmitted by CDPH within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
2. If Business Associate maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Business Associate shall provide such information in an electronic format to enable CDPH to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e).
3. If Business Associate receives data from CDPH that was provided to CDPH by the Social Security Administration, upon request by CDPH, Business Associate shall provide CDPH with a list of all employees, contractors and agents who have access to the Social Security data, including employees, contractors and agents of its subcontractors and agents.

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

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

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

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

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

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

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

- a. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
  - b. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
2. **Investigation and Investigation Report.** To immediately investigate such security incident, breach, or unauthorized access, use or disclosure of PHI or PI. Business Associate shall cooperate in good faith with CDPH in the investigation of any Breach or Security Incident. CDPH preserves the right to participate in the investigation of a security incident involving its data or conduct its own independent investigation, and Business Associate shall cooperate fully in such investigations. Within 72 hours of the discovery, Business Associate shall submit an updated "CDPH Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Information Security Officer.
  3. **Complete Report.** To provide a complete report of the investigation to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "CDPH Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If CDPH requests information in addition to that listed on the "CDPH Privacy Incident Report" form, Business Associate shall make reasonable efforts to provide CDPH with such information. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "CDPH Privacy Incident Report" form. CDPH will review and approve the

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determination of whether a breach occurred and individual notifications are required, and the corrective action plan.

4. **Notification of Individuals.** If the cause of a breach of PHI or PI is attributable to Business Associate or its subcontractors, agents or vendors, Business Associate shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in California Civil Code section 1798.29 and 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days. The CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Information Security Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.
5. **Responsibility for Reporting of Breaches.** If the cause of a breach of PHI or PI is attributable to Business Associate or its agents, subcontractors or vendors, Business Associate is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured PHI involves more than 500 residents of the State of California or its jurisdiction, Business Associate shall notify the Secretary of the breach immediately upon discovery of the breach. If Business Associate has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to CDPH in addition to Business Associate, Business Associate shall notify CDPH, and CDPH and Business Associate may take appropriate action to prevent duplicate reporting. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 1, above.
6. **CDPH Contact Information.** To direct communications to the above referenced CDPH staff, the Business Associate shall initiate contact as indicated herein. CDPH reserves the right to make changes to the contact information below by giving written notice to the Business Associate. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

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

- K. **Due Diligence.** Business Associate shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Addendum and is in compliance with applicable provisions

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of HIPAA, the HITECH Act and the HIPAA regulations, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Addendum.

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

**IV. Obligations of CDPH**

CDPH agrees to:

- A. *Notice of Privacy Practices.*** Provide Business Associate with the Notice of Privacy Practices that CDPH produces in accordance with 45 CFR section 164.520, as well as any changes to such notice.
- B. *Permission by Individuals for Use and Disclosure of PHI.*** Provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- C. *Notification of Restrictions.*** Notify Business Associate of any restriction to the use or disclosure of PHI that CDPH has agreed to in accordance with 45 CFR section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- D. *Requests Conflicting with HIPAA Rules.*** Not request Business Associate use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by CDPH.

**V. Audits, Inspection and Enforcement**

- A.** From time to time, CDPH may inspect the facilities, systems, books and records of Business Associate to monitor compliance with the Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the CDPH Privacy Officer in writing. The fact that CDPH inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does CDPH's:
1. Failure to detect; or
  2. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of CDPH's enforcement rights under the Agreement and this Addendum.
- B.** If Business Associate is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Addendum, Business Associate shall notify CDPH and provide CDPH with a copy of any PHI or PI that Business Associate provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI or PI to the Secretary. Business Associate is responsible for any civil penalties assessed due to an audit or investigation of Business Associate, in accordance with 42 U.S.C. section 17934(c).

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**VI. Requests for CDPH PHI or PI by Third Parties.** Business Associate and its employees, agents, or subcontractors shall promptly transmit to the CDPH Program Contract Manager all requests for disclosure of any CDPH PHI or PI requested by third parties to the agreement between Business Associate and CDPH (except from an Individual for an accounting of disclosures of the individual's personal information pursuant to applicable state or federal law), including but not limited to, requests under the California Public Records Act, subpoenas, or court orders, unless prohibited from doing so by applicable state or federal law.

**VII. Termination**

- A. Term.** The Term of this Addendum shall commence as of the effective date of this Addendum and shall extend beyond the termination of the Agreement and shall terminate when all the PHI provided by CDPH to Business Associate, or created or received by Business Associate on behalf of CDPH, is destroyed or returned to CDPH, in accordance with 45 CFR part 164.504(e)(2)(ii)(J).
- B. Termination for Cause by CDPH.** In accordance with 45 CFR part 164.504(e)(1)(ii), upon CDPH's knowledge of a material breach or violation of this Addendum by Business Associate, CDPH shall:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Agreement if Business Associate does not cure the breach or end the violation within the time specified by CDPH; or
  2. Immediately terminate the Agreement if Business Associate has breached a material term of this Addendum and cure is not possible.
- C. Termination for Cause by Business Associate.** . In accordance with 42 U.S.C. section 17934(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Business Associate knows of a material breach or violation by CDPH of this Addendum, it shall take the following steps:
1. Provide an opportunity for CDPH to cure the breach or end the violation and terminate the Agreement if CDPH does not cure the breach or end the violation within the time specified by Business Associate; or
  2. Immediately terminate the Agreement if CDPH has breached a material term of the Addendum and cure is not possible.
- D. Judicial or Administrative Proceedings.** Business Associate will notify CDPH if it is named as a defendant in a criminal proceeding for a violation of HIPAA. CDPH may terminate the Agreement if Business Associate is found guilty of a criminal violation of HIPAA. CDPH may terminate the Agreement if a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which Business Associate is a party or has been joined.
- E. Effect of Termination.** Upon termination or expiration of the Agreement for any reason, Business Associate shall return or destroy all PHI received from CDPH (or created or received by Business Associate on behalf of CDPH) that Business Associate still maintains in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall notify CDPH of the conditions that make the return or destruction infeasible, and CDPH and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. Business Associate shall continue to extend the protections of this Addendum to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

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**HIPAA Business Associate Addendum**

**VIII. Miscellaneous Provisions**

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

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- G. *Survival.*** The respective rights and obligations of Business Associate under Section VII.E of this Addendum shall survive the termination or expiration of the Agreement.
- H. *No Waiver of Obligations.*** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

**Attachment E**  
**HIPAA Business Associate Addendum**

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

**I. Personnel Controls**

- A. *Employee Training.*** All of the Business Associate's workforce members (workforce member) who assist in the performance of functions or activities on behalf of CDPH, or access or disclose CDPH PHI or PI must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the workforce member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination. Business Associate shall provide CDPH with its employee's certifications within five (5) business days of a request by CDPH for the employee's certifications.
- B. *Employee Discipline.*** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- C. *Confidentiality Statement.*** All persons that will be working with CDPH PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to CDPH PHI or PI. The statement must be renewed annually. Business Associate shall retain each workforce member's written confidentiality statement for CDPH inspection for a period of six (6) years following contract termination.
- D. *Workforce Member Assessment.*** Before a member of the Contractor's workforce may access CDPH PHI or PI, Contractor must ensure that all workforce members that will have access to CDPH PCI have been assessed to assure that there is no indication that the workforce member may present a risk to the security or integrity of CDPH PHI or PI. 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.

**II. Technical Security Controls**

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



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

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

### III. Audit Controls

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

### IV. Business Continuity / Disaster Recovery Controls

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

### V. Paper Document Controls

- A. *Supervision of Data.*** CDPH PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by a workforce member authorized to access the information. CDPH PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- B. *Escorting Visitors.*** Visitors to areas where CDPH PHI or PI is contained shall be escorted and CDPH PHI or PI shall be kept out of sight while visitors are in the area.

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

Exhibit F  
**FEMA PROVISIONS**

**1. EQUAL EMPLOYMENT OPPORTUNITY**

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

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

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

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

The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will

take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

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

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

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

## **2. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

Compliance with the Contract Work Hours and Safety Standards Act.

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

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

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

### 3. CLEAN AIR ACT

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

### 4. THE FEDERAL WATER POLLUTION CONTROL ACT

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

### 5. DEBARMENT AND SUSPENSION CLAUSE

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

**6. BYRD ANTI-LOBBYING CLAUSE**

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

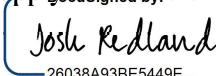
**APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING**

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

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

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

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

  
26038A93BE5449E

Signature of Contractor's Authorized Official

Josh Redland

SVP

Name and Title of Contractor's Authorized Official

Date: 1/13/2021

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

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

## **8. ACCESS TO RECORDS**

The following access to records requirements apply to this contract:

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

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

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

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

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

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

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

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

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



# General Terms and Conditions (GTC 04/2017)

## EXHIBIT C

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.
12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.
  - a. The Government Code Chapter on Antitrust claims contains the following definitions:
    - 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
    - 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
  - b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
  - c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
  - d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:
- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
  - b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.
19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:
- a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
  - b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER: If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)