



Contract Number
24-428

SAP Number

Department of Public Health

Department Contract Representative	<u>LaTanya Mitchell</u>
Telephone Number	<u>(909) 665-2647</u>
Contractor	<u>California Department of Public Health Office of AIDS</u>
Contractor Representative	<u>Anna-Katrina Rasmussen</u>
Telephone Number	<u>(916) 449-5900</u>
Contract Term	<u>January 1, 2024 through June 30, 2027</u>
Original Contract Amount	<u>\$1,200,000</u>
Amendment Amount	<u>N/A</u>
Total Contract Amount	<u>\$1,200,000</u>
Cost Center	<u>9300101000</u>

Briefly describe the general nature of the contract:

Accept and approve grant award agreement (State Agreement No. 23-10793) from the California Department of Public Health, Office of AIDS, for the Pre-Exposure Prophylaxis and the Post-Exposure Prophylaxis Initiation and Retention Initiative, in the amount of \$1,200,000, for a three-year period of January 1, 2024 through June 30, 2027

FOR COUNTY USE ONLY

Approved as to Legal Form

Adam Ebright

Adam Ebright, County Counsel

Date May 7, 2024

Reviewed for Contract Compliance

▶ _____

Date _____

Reviewed/Approved by Department

Joshua Dugas
Joshua Dugas (May 7, 2024 15:10 PDT)

Joshua Dugas, Director

Date May 7, 2024

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER 23-10793	PURCHASING AUTHORITY NUMBER (If Applicable)
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1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME
California Department of Public Health

CONTRACTOR NAME
San Bernardino County

2. The term of this Agreement is:
START DATE
January 01, 2024 or upon approval, whichever is later

THROUGH END DATE
June 30, 2027

3. The maximum amount of this Agreement is:
\$1,200,000 One Million Two-Hundred Thousand Dollars

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

Exhibits	Title	Pages
Exhibit A	Scope of Work	11
Exhibit B	Budget Detail and Payment Provisions	4
Exhibit B	Attachment I, Budget Detail	1
+ - Exhibit C *	General Terms and Conditions	GTC 04/2017
+ - Exhibit D	Special Terms and Conditions	18
+ - Exhibit E	Additional Provisions	3
+ - Exhibit F	Non Discrimination Clause (OCP-1) STD 17a	1
+ - Exhibit G	Restrictions and Requirements for the Use and Disclosure of HIV/AIDS Public Health Data	4
+ - Exhibit H	HIPAA Business Associate Addendum (10-23)	14
+ - Exhibit I	Attachment I-Agreement by Employee/Contractor to Comply with Confidentiality Requirements	2
+ - Exhibit J	Contractor's Release Form CDPH 2352	1

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.)
San Bernardino County

CONTRACTOR BUSINESS ADDRESS 385 N Arrowhead Avenue, Fifth Floor	CITY San Bernardino	STATE CA	ZIP 92415
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PRINTED NAME OF PERSON SIGNING Dawn Rowe	TITLE Chair, Board of Supervisors
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CONTRACTOR AUTHORIZED SIGNATURE 	DATE SIGNED MAY 21 2024
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SCO ID: 4265-2310793

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

AGREEMENT NUMBER 23-10793	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 Ave, Ste 74.262, MS 1802, PO Box 997377

CITY

Sacramento

STATE

CA

ZIP

95899

PRINTED NAME OF PERSON SIGNING

Javier Sandoval

TITLE

Chief, Contracts Management Unit

CONTRACTING AGENCY AUTHORIZED SIGNATURE

Javier Sandoval

DATE SIGNED

6-21-24

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

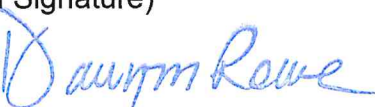
Exempt per OA Budget Act of 2023

Contractor Certification Clauses

CCC 04/2017

CERTIFICATION

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

Contractor/Bidder Firm Name (Printed)		Federal ID Number
San Bernardino County		95-6004728
By (Authorized Signature)		
		
Printed Name and Title of Person Signing		
Dawn Rowe, Chair, Board of Supervisors		
Date Executed	Executed in the County of	
MAY 21 2024	San Bernardino	

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 11102) (Not applicable to public entities.)

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

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,

2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

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

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

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

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

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

6. SWEATFREE CODE OF CONDUCT:

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

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably

required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.

8. GENDER IDENTITY: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.35.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

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

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

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

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

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

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

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

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

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

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

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and

Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

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

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

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

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

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

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

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

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

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

Exhibit A
Scope of Work

1. Service Overview

The California Department of Public Health Office of AIDS (CDPH/OA) works to protect the public's health in the Golden State and helps shapes positive health outcomes for individuals, families, and communities to advance the health and well-being of California's diverse people and the communities. The Contractor agrees to provide the following services described herein.

California Health and Safety Code 120972.1 establishes the Pre-Exposure Prophylaxis (PrEP) and Post-Exposure Prophylaxis (PEP) Initiation and Retention (PPIR) Initiative which allows for the use of AIDS Drug Assistance Program (ADAP) Rebate Funds to be allocated to Local Health Departments (LHDs) and Community Based Organizations (CBOs) to support PrEP and PEP navigation and retention coordinators and related services.

The goal of the PPIR Initiative is to support and expand PrEP and PEP navigation services for the purpose of increasing PrEP and PEP initiation and retention among individuals at perceived higher risk of new human immunodeficiency virus (HIV) infection.

The Contractor will utilize the following four strategies to accomplish this goal:

1. Promote knowledge about PrEP/PEP among priority population(s) and service providers
2. Engage priority population(s) and increase PrEP/PEP accessibility
3. Navigate priority population participants to PrEP/PEP and other necessary services
4. Retain priority population participants in PrEP/PEP services

2. Service Location

The Services shall be performed at the following locations:

- San Bernardino Health Center, 606 E Mill Street, San Bernardino, CA 92415
- Hesperia Health Center, 16453 Bear Valley Road, Hesperia, CA 92345
- Ontario Health Center, 150 E Holt Blvd, Ontario, CA 91761

Services will be performed at applicable sites and locations within the County of San Bernardino.

3. Service Hours

The services shall be provided during regular business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding state holidays.

Evening and weekend hours may be provided based on client feedback and established need throughout the contract term. CDPH/OA must be notified by email within two weeks of changes to extended service hours. Extended service hours must be promoted among the priority populations served and clearly posted.

4. Project Representatives

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

Exhibit A
Scope of Work

California Department of Public Health Becca Parks, Chief Program Integrity and Operations Section Telephone: (916) 365-2646 E-mail: Becca.Parks@cdph.ca.gov	San Bernardino County Dawn Rowe, Chair Board of Supervisors Telephone: (909) 387-4855 E-mail: supervisor.rowe@bos.sbcounty.gov
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B. Direct all inquiries to:

California Department of Public Health <u>PPIR Initiative</u> P.O. Box 997426, MS 7700 Sacramento, CA 95899-7426 E-mail: PPIRInitiative@cdph.ca.gov <u>CONTRACTS</u> E-mail: ADAPContracts@cdph.ca.gov <u>FISCAL:</u> E-mail: ADAPInvoices@cdph.ca.gov <u>ADAP Call Center Data Processing</u> <u>Center (CCDPC)</u> Hours: Monday – Friday 8 a.m. to 5 p.m. Telephone: (844) 421-7050 Fax: (844) 421-8008	San Bernardino County Heather Cockerill, Public Health Program Manager 340 N Mtn View Avenue San Bernardino, CA 92415 Telephone: (909) 387-4557 E-mail: hcockerill@dph.sbcounty.gov
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C. All payments from CDPH to the Contractor shall be sent to the following address:

Remittance Address
Contractor: San Bernardino County Attention "Cashier": Trent Chandler, Accountant III Address: 451 E Vanderbilt Way, Suite 200, San Bernardino, CA 92408 Telephone: (909) 387-6295 E-mail: trent.chandler@dph.sbcounty.gov

D. Either party may make changes to the Project Representatives, or remittance address, by giving written notice to the other party, said changes shall not require an amendment to this agreement. Note: Remittance address changes will require the Contractor to submit a completed CDPH 9083 Governmental Entity Taxpayer ID Form or STD 204 Payee Data Record Form and the STD 205 Payee Data Supplemental which can be requested through the CDPH Project Representatives for processing.

Exhibit A
Scope of Work

5. Services to be Performed

Contractor shall perform the activities as listed in the table below.

Objective 1: Promote knowledge about PrEP and PEP among priority population(s) and service providers.

	Major Functions, Tasks, and Activities	Timeline	Performance Measure and/or Deliverables
1.1	Contractor will increase the number of prescribers in their referral network from baseline.	Upon execution and throughout the contract term	Initial number of PrEP/PEP prescribers in referral network reported in Baseline Report. Percentage increase from Baseline Report included in each Annual Progress Report (APR).
1.2	Contractor must attend quarterly check-in meeting with CDPH.	Upon execution and throughout the contract term	Share successes, struggles, and lessons learned during the quarter at check-in meetings. Discuss implementing ideas, concepts, or practical interventions into programs at check-in meetings. Identify areas of capacity building and technical assistance needs at check-in meetings. Summary of quarterly check-in meetings described in quarterly reports and APR.
1.3	Contractor will participate in CDPH-hosted PrEP Navigation Learning Collaborative with PrEP and PEP navigation programs, including but not limited to, PPIR Initiative awardees. The frequency of PrEP Navigation Learning Collaborative sessions will be no more than once per quarter.	Upon execution and throughout the contract term	Participate in all sessions unless prior notice is given. Number of PrEP Navigation Learning Collaborative sessions attended reported in APR.

Exhibit A
 Scope of Work

	Major Functions, Tasks, and Activities	Timeline	Performance Measure and/or Deliverables
1.4	Contractor will conduct in-person promotion and client outreach to engage priority populations.	Upon execution and throughout the contract term	Summary of successes and challenges conducting in-person promotion and client outreach to engage priority populations to be reported in the APR.
1.5	Contractor will adapt social media and marketing campaigns for local use.	Upon execution and throughout the contract term	Summary of successes and challenges adapting social media and marketing campaigns for local use to be reported in the APR.
1.6	Contractor will provide PrEP/PEP public health detailing to prescribers. Public health detailing includes all the activities necessary to onboard an agency to PrEP including but not limited to trainings, follow up technical assistance (TA), and one-on-one peer support.	Upon execution and throughout the contract term	Number of prescribers who were provided PrEP/PEP public health detailing to be reported in the APR. Number of prescribers who were provided PrEP/PEP public health detailing and prescribed PrEP/PEP within 6 months of detailing to be reported in the APR.
1.7	Contractor will provide PrEP/PEP public health detailing to pharmacists. Public health detailing includes all the activities necessary to onboard an agency to PrEP including but not limited to trainings, follow up TA, and one-on-one peer support.	Upon execution and throughout the contract term	Utilize list of known local pharmacies that stock PrEP/PEP medications to identify opportunities for public health detailing. Number of pharmacists who were provided public health detailing and summary of successes and challenges to be reported in the APR.

Exhibit A
Scope of Work

Objective 2: Engage priority population(s) and increase PrEP/PEP accessibility.

	Major Functions, Tasks, and Activities	Timeline	Performance Measure and/or Deliverables
2.1	Contractor will facilitate client participation in an annual survey developed and hosted by CDPH/OA designed to evaluate program awareness, program satisfaction, health, and health care access.	Annually	Survey results to be reported via Qualtrics.
2.2	<p>Contractor will distribute client incentives or Behavior Modification Materials (BMM) to clients who participate in the annual survey. Survey responses will be used to build upon and expand program awareness, program satisfaction, client health, and health care access.</p> <p>The value of the BMM is limited to no more than \$50.00, and no more than one BMM may be distributed per person, per milestone or client engagement event. BMM can only be distributed to enrolled PPIR clients. BMM that have not been distributed by the end of the contract term must be returned to the respective merchants for reimbursement within 30 days of the contract termination date. Do not return unused gift cards to CDPH. CDPH must be reimbursed for any paid invoices received for the purchase of unused BMM. BMM cannot be used for the purchase of alcohol, tobacco, or drug products.</p> <p>Incentives such as low value restricted gift cards (e.g., Walmart, Safeway, transportation vouchers), and/or other PPIR-related incentives. Client incentives, such as low value gift cards, may be approved BMM. BMM are provide to program participants to motivate and/or reinforce positive behavior and/or involvement in PPIR and related activities. The value of the incentive is limited to \$50.00 of</p>	Annually	<p>Distribution logs of specific BMM to be reported in the Monthly Incentive Tracker provided by CDPH.</p> <p>Summary successes and challenges to be reported in the APR.</p> <p>Contractor is responsible for the possession, security (e.g., will keep the BMM in a secure location), and accountability of the BMM. The Contractor will prepare a log sheet that will track and identify each of the BMM, value, transfer date, and recipient. CDPH reserves the right to audit the BMM log no less than annually and agrees to provide prior notification to Contractor within a reasonable time frame for the scheduling of said audit.</p>

Exhibit A
 Scope of Work

	Major Functions, Tasks, and Activities	Timeline	Performance Measure and/or Deliverables
	<p>merchandise or person per activity participation, per survey. Incentives cannot be used for the purchase of alcohol, tobacco, or drug products.</p> <p>BMM support positive behavior change, which may result from insights clients gain by attending an initial appointment and connecting to additional services as needed. These activities will assist identifying and documenting the complex, multilevel social, structural, and geographic barriers that populations encounter while seeking clinical and non-clinical care and provide valuable data to inform on promotion, engagement, navigation, and retention efforts.</p>		
2.3	<p>Contractor will provide transportation for clients to and/or from appointments related to PrEP and/or PEP services as requested.</p>	<p>Beginning contract year one and throughout the contract term</p>	<p>Number of clients who used agency provided transportation to and/or from appointments reported in Local Evaluation Online (LEO).</p> <p>List and describe the number of clients who received transportation in the APR.</p>
2.4	<p>Contractor will develop protocol(s) to integrate PrEP/PEP into HIV testing sites, and sexually transmitted infection (STI) testing sites (both mobile and stationary) that are part of your agency's network.</p>	<p>Upon execution and throughout the contract term</p>	<p>Develop and implement protocol.</p> <p>Status of protocol development and implementation, to be reported in the APR.</p> <p>Once protocol is implemented, a copy is to be included in the APR and no further updates will be required unless significant changes occur.</p>

Exhibit A
Scope of Work

	Major Functions, Tasks, and Activities	Timeline	Performance Measure and/or Deliverables
2.5	Contractor must train staff on protocol(s) to integrate PrEP/PEP into HIV and STI testing sites that are part of your agency's network.	Upon execution and throughout the contract term	Number of HIV and STI test sites trained in protocol to be reported in the APR.
2.6	Contractor will conduct or attend agency-wide staff cultural competency trainings for priority populations.	Annually	Number and type of trainings attended and number of staff who take cultural competency training to be reported in the APR. If conducting cultural competency training, copy of training materials and list of staff who attended training to be reported in the APR.

Objective 3: Navigation priority population participants to PrEP/PEP and other necessary services.

	Major Functions, Tasks, and Activities	Timeline	Performance Measure and/or Deliverables
3.1	Contract with CDPH as a PrEP-AP enrollment site and/or clinical provider site.	Upon execution and throughout the contract term	Application for PrEP-AP enrollment site or clinical provider site submitted. If already a contracted PrEP-AP enrollment site or clinical provider site upon execution, provide updates to any items related to current contract including but not limited to service location(s), contract representatives, enrollment workers, and training needs.
3.2	Contractor will onboard and train staff to conduct PrEP/PEP navigation and/or benefits enrollment activities	Upon execution and throughout	Initial number of current staff (FTE) conducting PrEP/PEP navigation and/or benefits enrollment activities reported in Baseline Report.

Exhibit A
 Scope of Work

	Major Functions, Tasks, and Activities	Timeline	Performance Measure and/or Deliverables
		contract year one	<p>Number of staff (FTE) needed to conduct PrEP/PEP navigation and/or benefits enrollment activities reported in Baseline Report.</p> <p>Number of staff (FTE) hired and onboarded to conduct PrEP/PEP navigation and/or benefits enrollment activities reported in the APR.</p> <p>Number of staff trained to conduct PrEP/PEP navigation and/or benefits enrollment activities reported in the APR.</p> <p>Percentage increase of number of staff hired and on boarded as well as number of staff trained to be reported in the APR.</p>
3.3	Contractor will ensure staff are trained and familiar with using and entering data in LEO.	Upon execution and throughout the contract term	<p>All staff trained and onboarded in LEO with OA-provided resources.</p> <p>LEO forms training webinar completed, and locations and employees entered in LEO within a week of completion.</p>
3.4	Contractor must develop and implement PrEP protocol to minimize barriers to PrEP access.	Upon execution through contract year one	<p>Develop and implement PrEP protocol.</p> <p>Status of protocol development and implementation to be reported in the APR.</p> <p>Once protocol is implemented, a copy is to be included in the APR and no further status updates will be required unless significant changes occur.</p>

Exhibit A
 Scope of Work

	Major Functions, Tasks, and Activities	Timeline	Performance Measure and/or Deliverables
3.5	Contractor must train staff on PrEP protocol.	Beginning contract year two and throughout the contract term	Number of staff trained in PrEP protocol to be reported in the APR.
3.6	Contractor must develop and implement PEP protocol to minimize barriers to PEP access.	Upon execution through contract year one	Develop and implement PEP protocol. Status of protocol development and implementation to be reported in the APR. Once protocol is implemented, a copy is to be included in the APR and no further status updates will be required unless significant changes occur.
3.7	Contractor must train staff on PEP protocol.	Beginning contract year two and throughout the contract term	Number of staff trained in PEP protocol to be reported in the APR.
3.8	Contractor will facilitate PEP medication access for clients within 72 hours of potential HIV exposure.	Upon execution and throughout the contract term	Number of clients with PEP indication reported in LEO. A client has indication for PEP if they are HIV negative or do not know their status and have had a potential exposure to HIV in the last 72 hours. Number of clients with PEP indication who initiated PEP within 72 hours of potential HIV exposure reported in LEO.

Exhibit A
 Scope of Work

	Major Functions, Tasks, and Activities	Timeline	Performance Measure and/or Deliverables
3.9	Contractor must develop and implement rapid PrEP protocol (rapid PrEP means a client can access PrEP prescription in 1-3 days).	Upon execution through contract year one	Develop and implement rapid PrEP protocol. Status of protocol development and implementation to be reported in the APR. Once protocol is implemented, a copy is to be included in the APR and no further status updates will be required unless significant changes occur.
3.10	Contractor must train staff on rapid PrEP protocol.	Beginning contract year two and throughout the contract term	Number of staff trained in rapid PrEP protocol to be reported in the APR.
3.11	Contractor will screen clients for PrEP eligibility. OA criteria for PrEP eligibility is any person over 12 years old that is not currently on PrEP, tests negative for HIV or with unknown HIV status, and who either wants PrEP or is sexually active or planning to be sexually active or injects drugs or may inject drugs in the future.	Upon execution and throughout the contract term	Number of clients screened reported in LEO.
3.12	Contractor will refer clients to PrEP prescribers within five business days.	Upon execution and throughout the contract term	Number of clients referred to PrEP/PEP prescribers reported in LEO.

Exhibit A
Scope of Work

	Major Functions, Tasks, and Activities	Timeline	Performance Measure and/or Deliverables
3.13	Contractor will link clients to PrEP prescribers within five business days (warm handoff recommended). A warm handoff is defined as a transfer that is conducted between two care providers in the presence of the client (either in person or over a telecommunication platform).	Upon execution and throughout the contract term	Number of clients who attended appointment with prescriber reported in LEO.
3.14	Contractor will provide health benefits navigation and enrollment assistance in health insurance and payer assistance programs to PrEP/PEP clients.	Upon execution and throughout the contract term	Number of clients screened who need health benefits navigation and enrollment reported in APR and LEO. Number of clients provided/referred to health benefits navigation and enrollment reported in APR and LEO.

Objective 4: Retain priority population participants in PrEP/PEP services.

	Major Functions, Tasks, and Activities	Timeline	Performance Measure and/or Deliverables
4.1	Contractor will follow up with clients to see if they initiated their PrEP prescription within one business week.	Upon execution and throughout the contract term	Number of clients who initiate PrEP/PEP reported in LEO.
4.2	Contractor will follow up with clients at three months to see if they maintained their PrEP treatment.	Upon execution and throughout the contract term	Number of clients who maintain PrEP at three months reported in LEO.

Exhibit B
Budget Detail and Payment Provisions

1. Invoicing and Payment

- A. In no event shall the Contractor request reimbursement from the State for obligations entered into or for costs incurred prior to the commencement date or after the expiration of this Agreement.
- B. For services satisfactorily rendered, and upon receipt and approval of any invoice(s) received, CDPH agrees to compensate the Contractor for actual expenditures incurred in accordance with the Budget Line-Item amounts specified in Exhibit B, Attachment I, Budget Detail sheet.
- C. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than quarterly in arrears or electronically upon CDPH approval to:

ADAPInvoices@cdph.ca.gov copying ADAPContracts@cdph.ca.gov and PPIRInitiative@cdph.ca.gov

The State, at its discretion, may designate an alternate invoice submission address. A change in the invoice address shall be accomplished via a written notice to the Contractor by the State and shall not require an amendment to this agreement.

D. Invoices shall:

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

E. Amounts Payable

The amounts payable under this agreement shall not exceed the total amounts of \$1,200,000.00 as identified on the first page of the agreement nor shall it exceed the amount shown in Exhibit B, Attachment I.

2. Budget Contingency Clause

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

Exhibit B
Budget Detail and Payment Provisions

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

3. Prompt Payment Clause

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

4. Timely Submission of Final Invoice

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

5. Expense Allowability / Fiscal Documentation

- A. Invoice(s) 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 by the state for three years 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 dis-allowed, 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 re-payment.

Exhibit B
Budget Detail and Payment Provisions

2. A repayment schedule which is agreeable to both the State and the Contractor.
- B. The State reserves the right to select which option as indicated above in paragraph A will be employed and the Contractor will be notified by the State in writing of the claim procedure to be utilized.
- C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 business 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.

7. Advance Payments

No advance payment is allowed under this Contract.

8. Travel and Per Diem Reimbursement

Any reimbursement for necessary travel and per diem shall be at the rates currently in effect, as established by the California Department of Human Resources (Cal HR). If the Cal HR rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary. No travel outside the state of California shall be reimbursed without prior authorization from the CDPH. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation. See CalHR website:
<http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>

9. Proper Use of Funds

A. Proper Use of Funds

- 1) The funds for this grant agreement may be used for the following items, with supportive justification, tracking, and reporting of outcomes:
 - a. Incentives such as low value restricted gift cards (e.g., Walmart, Safeway, transportation vouchers), and/or other project-related incentives.
 - b. Client incentives, such as low value gift cards, may be approved as Behavioral Modification Materials (BMM). BMMs are provided to program participants to

Exhibit B
Budget Detail and Payment Provisions

motivate and/or reinforce positive behavior and/or involvement in the PrEP and PEP Initiation and Retention (PPIR) Initiative.

- c. The value of the incentive is limited to \$50.00 of merchandise per person per activity participation in the PPIR Initiative.
 - d. Current CDPH approvals require the BMM to be justified with scientific proof of behavior change, and be accompanied by a targeted distribution plan, incentive tracking log, and reporting of incentive distribution.
 - e. Incentives cannot be used for the purchase of alcohol, tobacco, or drug or cannabis products.
 - f. There is no prepayment for incentives. The Contractor will only be reimbursed for the total cost of incentives distributed during each month/quarter.
- 2) The Contractor is responsible for the possession, security (e.g., will keep the BMMs in a secure location), and accountability of the BMMs. The Contractor will prepare a log sheet that will track and identify each of the BMMs, value, transfer date, and recipient. CDPH reserves the right to conduct audit of such log sheet on a once per year basis and agrees to provide prior notification to Contractor within a reasonable time frame for the scheduling of said audit.

B. The funds for this grant agreement cannot be used for:

- 1) Stuff We All Get (SWAG) - The purchase of free promotional items for health promotion events including but not limited to pens, mugs, t-shirts, posters, key chains, bumper stickers, etc. This provision is in accordance with the California State Constitution, Article 16, section 6, which prohibits any gifting of public funds.
- 2) Individual prizes or high value incentives (e.g., iPads, iPhones) for health promotion competitions.
- 3) Cash incentives paid to an individual.
- 4) Scholarships paid to an individual or a school on behalf of an individual.
- 5) Food (e.g., sponsored lunch or dinner at provider education sessions, brown bag lunches, buffets at screening events).
- 6) The purchase, lease, or other support of county vehicles or mobile testing units.
- 7) Construction, renovation, improvement, or repair of property.



**Exhibit B, Attachment I
Budget Detail
January 1, 2024 - June 30, 2027**

		Year (1)			Year (2)			Year (3)			Year (4)			Totals
		January 1, 2024 - June 30, 2024			July 1, 2024 - June 30, 2025			July 1, 2025 - June 30, 2026			July 1, 2026 - June 30, 2027			
Personnel		FTE	Avg. Salary	Budget	FTE	Avg. Salary	Budget	FTE	Avg. Salary	Budget	FTE	Avg. Salary	Budget	
Position Title	SOW Reference													
Health Education Specialist II	Objectives 1-3	1.00	\$ 31,145	\$ 31,145	1.00	\$ 62,289	\$ 62,289	1.00	\$ 62,289	\$ 62,289	1.00	\$ 62,289	\$ 62,289	\$ 218,012
Health Education Specialist I	Objectives 1-4	1.00	\$ 27,585	\$ 27,585	1.00	\$ 55,170	\$ 55,170	1.00	\$ 55,170	\$ 55,170	1.00	\$ 55,170	\$ 55,170	\$ 193,095
Health Education Specialist I	Objectives 1-4	1.00	\$ 27,585	\$ 27,585	0.60	\$ 55,170	\$ 33,102	0.60	\$ 55,170	\$ 33,102	0.60	\$ 55,170	\$ 33,102	\$ 126,891
Health Education Specialist I	Objectives 1-4	1.00	\$ 27,585	\$ 27,585	0.00	\$ -	\$ -	0.00	\$ -	\$ -	0.00	\$ -	\$ -	\$ 27,585
Health Education Specialist I	Objectives 1-4	1.00	\$ 27,585	\$ 27,585	0.00	\$ -	\$ -	0.00	\$ -	\$ -	0.00	\$ -	\$ -	\$ 27,585
Total Salaries and Wages				\$ 141,485		\$ 150,561			\$ 150,561			\$ 150,561	\$ 593,168	
Fringe Benefits				Percentage	Percentage	Percentage	Percentage							
				56.24%	56.24%	56.24%	56.24%							
				\$ 79,571	\$ 84,676	\$ 84,676	\$ 84,676						\$ 333,599	
Total Personnel				\$ 221,056	\$ 235,237	\$ 235,237	\$ 235,237						\$ 926,767	
Operating Expenses	SOW Reference			Budget		Budget		Budget		Budget		Budget		
Behavior Modification Materials (BMM) - incentives for participant survey	Objective 2			\$ 500		\$ 500		\$ 500		\$ 500		\$ 500	\$ 2,000	
PrEP Starter Kits	Objective 3			\$ 16,020		\$ 11,535		\$ 11,535		\$ 11,535		\$ 11,535	\$ 50,625	
Communications (Email, Phone, VPN)	Objectives 1-4			\$ 4,302		\$ 8,604		\$ 8,604		\$ 8,604		\$ 8,604	\$ 30,114	
Social Media Advertising	Objectives 1-4			\$ 16,459									\$ 16,459	
Total Operating Expenses				\$ 37,281	\$ 20,639	\$ 20,639	\$ 20,639					\$ 20,639	\$ 99,198	
Travel	SOW Reference			Budget		Budget		Budget		Budget		Budget		
Staff Mileage	Objectives 1-4			\$ 1,786		\$ 1,786		\$ 1,786		\$ 1,786		\$ 1,786	\$ 7,144	
Total Travel				\$ 1,786	\$ 1,786	\$ 1,786	\$ 1,786					\$ 1,786	\$ 7,144	
Subcontractors	SOW Reference			Budget		Budget		Budget		Budget		Budget		
CPS Solutions	Objective 1			\$ 1,524		\$ 1,524		\$ 1,524		\$ 1,524		\$ 1,524	\$ 6,096	
Total Subcontractors				\$ 1,524	\$ 1,524	\$ 1,524	\$ 1,524					\$ 1,524	\$ 6,096	
Total Indirect Costs		Percentage	Budget	Percentage	Budget	Percentage	Budget	Percentage	Budget	Percentage	Budget	Percentage	Budget	
Personnel Costs		17.35%	\$ 38,353	17.35%	\$ 40,814	17.35%	\$ 40,814	17.35%	\$ 40,814	17.35%	\$ 40,814	17.35%	\$ 160,795	
Total Costs				\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000					\$ 300,000	\$ 1,200,000	

Contract Year 1 is only 6 months

BMM that have not been distributed by the end of the contract term must be returned to the respective merchants for reimbursement within 30 days of the contract termination date. Do not return unused gift cards to CDPH. CDPH must be reimbursed for any paid invoices received for the purchase of unused BMM. BMM cannot be used for the purchase of alcohol, tobacco, or drug products.

Exhibit D
Special Terms and Conditions

(For Subvention/Local Assistance Agreements rev 02/2022)

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

Index of Special Terms and Conditions

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2. Equipment Ownership / Inventory / Disposition	12. Prohibited Use of State Funds for Software
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Special Terms and Conditions

1. Procurement Rules

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

A. Equipment definitions

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

1. **Major equipment/property:** A tangible or intangible item having a base unit cost of **\$2,500 or more** with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.
2. **Minor equipment/property:** A tangible item having a base unit cost of **less than \$2,500** with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this Agreement.

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

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

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

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

2. All equipment purchases are subject to paragraphs d through g of this provision. Paragraph b of this provision shall also apply if equipment purchases are delegated

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Special Terms and Conditions

to subcontractors that are either a government or public entity.

3. Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:
 - (a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
 - (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open and free competition.
 - (c) Procurements shall be conducted in a manner that provides for all of the following:
 - I. Avoid purchasing unnecessary or duplicate items.
 - II. Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
 - III. Take positive steps to utilize small and veteran owned businesses.
- D. Unless waived or otherwise stipulated in writing by CDPH, prior written authorization from the appropriate CDPH Program Contract Manager will be required before the Contractor will be reimbursed for any purchase **exceeding** \$2,500 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by CDPH, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- E. In special circumstances determined by CDPH (e.g., when CDPH has a need to monitor certain purchases, etc.), CDPH may require prior written authorization and/or the submission of paid vendor receipts for any purchase regardless of dollar amount. CDPH reserves the right to either deny claims for reimbursement or to request repayment for any Contractor purchase that CDPH determines to be unnecessary in carrying out performance under this Agreement.
- F. The Contractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor at any time.
- G. For all purchases, the Contractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also

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be maintained on file by the Contractor for inspection or audit.

2. Equipment Ownership / Inventory / Disposition

(Applicable to agreements in which equipment and/or property is furnished by CDPH and/or when said items are purchased or reimbursed with State and Federal funds (absence a Federal requirement for transfer of title))

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

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

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

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

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

(a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).

(b) Submit the inventory report to CDPH according to the instructions appearing on the inventory form or issued by the CDPH Program Contract Manager.

(c) Contact the CDPH Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by CDPH's Asset Management Unit.

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

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Special Terms and Conditions

- C. Unless otherwise stipulated, CDPH shall be under no obligation to pay the cost of restoration or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.
- D. The Contractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.
 - 1. In administering this provision, CDPH may require the Contractor to repair or replace to CDPH's satisfaction any damaged, lost or stolen state equipment and/or property. Contractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the CDPH Program Contract Manager.
- E. Unless otherwise stipulated by the program funding this Agreement, equipment and/or property purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, shall only be used for performance of this Agreement or another CDPH agreement.
- F. Within sixty (60) calendar days prior to the termination or end of this Agreement, the Contractor shall provide a final inventory report of equipment and/or property to the CDPH Program Contract Manager and shall, at that time, query CDPH as to the requirements, including the manner and method, of returning state equipment and/or property to CDPH. Final disposition of equipment and/or property shall be at CDPH expense and according to CDPH instructions. Equipment and/or property disposition instructions shall be issued by CDPH immediately after receipt of the final inventory report. At the termination or conclusion of this Agreement, CDPH may at its discretion, authorize the continued use of state equipment and/or property for performance of work under a different CDPH agreement.

G. Motor Vehicles

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

- 1. If motor vehicles are purchased/reimbursed or furnished by CDPH under the terms of this Agreement, within thirty (30) calendar days prior to the termination or end of this Agreement, the Contractor shall return such vehicles to CDPH and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to CDPH.
- 2. If motor vehicles are purchased/reimbursed or furnished by CDPH under the terms of this Agreement, **the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner.** The Contractor shall only use said vehicles for the performance under the terms of this Agreement.

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3. The Contractor agrees that all operators of motor vehicles, purchased/reimbursed or furnished by CDPH under the terms of this Agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.
4. If any motor vehicle is purchased/reimbursed or furnished by CDPH under the terms of this Agreement, the Contractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this Agreement or any extension period during which any vehicle remains in the Contractor's possession:

Automobile Liability Insurance

- (a) The Contractor, by signing this Agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement to the Contractor.
- (b) The Contractor shall, as soon as practical, furnish a copy of the certificate of insurance to the CDPH Program Contract Manager. The certificate of insurance shall identify the CDPH contract or agreement number for which the insurance applies.
- (c) The Contractor agrees that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this Agreement or until such time as the motor vehicle is returned to CDPH.
- (d) The Contractor agrees to provide at least thirty (30) days prior to the expiration date of said insurance coverage a copy of a new certificate of insurance evidencing continued coverage, as indicated herein for not less than the remainder of the term of this Agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.
- (e) The Contractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:
 - I. The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State.
 - II. The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this Agreement and any extension or continuation of this Agreement.

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- III. The insurance carrier shall notify CDPH in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to each agreement number for which the insurance was obtained.
- (f) The Contractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by CDPH, in writing, if this provision is applicable to this Agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.
- (g) In the event the Contractor fails to keep insurance coverage as required herein in effect at all times during vehicle possession, CDPH may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

3. Subcontract Requirements

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

- A. Prior written authorization by the State is required before the Contractor enters into or is reimbursed for any subcontract for services exceeding \$2,500 for any articles, supplies, equipment, or services. The Contractor shall obtain and submit articles of at least three complete quotations or adequate justification for the absence of bidding.
- B. CDPH reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.
1. Upon receipt of a written notice from CDPH requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by CDPH.
- C. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) exceeding \$2,500 are subject to the prior review and written approval of CDPH.
- D. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by CDPH, make copies available for approval, inspection, or audit.

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- E. CDPH assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.
- F. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.
- G. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement and shall be the subcontractor's sole point of contact for all matters related to the performance and payment during the term of this Agreement.
- H. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

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

4. Income Restrictions

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

5. Site Inspection

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

6. Intellectual Property Rights

A. Ownership

- 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,

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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 hereafter come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
 - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.
3. In the performance of this Agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of CDPH's Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of CDPH's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of CDPH. **Except as otherwise set forth herein, neither the Contractor nor CDPH shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to CDPH, Contractor agrees to abide by all license and confidentiality restrictions applicable to CDPH in the third-party's license agreement.
4. Contractor agrees to cooperate with CDPH in establishing or maintaining CDPH's exclusive rights in the Intellectual Property, and in assuring CDPH's sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to CDPH all rights, title and interest in Intellectual

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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.

5. Contractor further agrees to assist and cooperate with CDPH in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce CDPH's Intellectual Property rights and interests.

B. Retained Rights / License Rights

1. 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 Paragraph A, subparagraph 2.(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to CDPH to any work product made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.

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2. All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement, shall include CDPH's notice of copyright, which shall read in 3mm or larger typeface: "© [*Enter Current Year e.g., 2014, etc.*], 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 Section 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 Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon 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

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display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.

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

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

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related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDPH's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. CDPH reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDPH.

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

H. Survival

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

7. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior CDPH approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this Agreement and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this Agreement in any media. This provision does not apply to necessary staff meetings or training sessions

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held for the staff of the Contractor in order to conduct routine business matters.

8. Confidentiality of Information

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

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

9. Documents, Publications and Written Reports

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

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

10. Dispute Resolution Process

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- A. A Contractor grievance exists whenever there is a dispute arising from CDPH's action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDPH, the Contractor must seek resolution using the procedure outlined below.
1. The Contractor should first informally discuss the problem with the CDPH Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the CDPH 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 CDPH Program Branch Chief shall render a decision within ten (10) business days after receipt of the written grievance from the Contractor. The CDPH Program Branch Chief shall respond in writing to the Contractor indicating the decision and reasons, therefore. If the Contractor disagrees with the CDPH Program Branch Chief's decision, the Contractor may appeal to the second level.
 2. When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with CDPH Program 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 CDPH Program Branch Chief's decision. The appeal shall be addressed to the CDPH Deputy Director of the division in which the branch is organized within ten (10) business days from receipt of the CDPH Program Branch Chief's decision. The CDPH 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 CDPH Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) business days of receipt of the Contractor's second level appeal.
- B. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Division 2, Chapter 2, Article 3 (commencing with Section 1140) of the California Code of Regulations).
- C. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22 Division 2, Subdivision 2, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the Agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22 Division 3, Subdivision 1, Chapter 3, California Code of Regulations.
- D. Unless otherwise stipulated in writing by CDPH, all dispute, grievance and/or appeal correspondence shall be directed to the CDPH Contract Manager.
- E. There are organizational differences within CDPH's funding programs and the management levels identified in this dispute resolution provision may not apply in every

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contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDPH Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

11. Officials Not to Benefit

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

12. Prohibited Use of State Funds for Software

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

13. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

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

- A. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
- B. As used herein, fringe benefits do not include:
 - 1. Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training
 - 2. Director's and executive committee member's fees
 - 3. Incentive awards and/or bonus incentive pay
 - 4. Allowances for off-site pay
 - 5. Location allowances
 - 6. Hardship pay
 - 7. Cost-of-living differentials
- C. Specific allowable fringe benefits include:
 - 1. Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the

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employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.

D. To be an allowable fringe benefit, the cost must meet the following criteria:

1. Be necessary and reasonable for the performance of the Agreement.
2. Be determined in accordance with generally accepted accounting principles.
3. Be consistent with policies that apply uniformly to all activities of the Contractor.

E. Contractor agrees that all fringe benefits shall be at actual cost.

F. Earned/Accrued Compensation

1. Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See section F.3.A. below for an example.
2. For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Provision F.3.B. for an example.
3. For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Provision F.3.C. for an example.

A. Example No. 1:

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

B. Example No. 2:

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

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C. Example No. 3:

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

14. Cancellation

- A. This agreement may be cancelled by CDPH without cause upon 30 calendar days advance written notice to the Contractor.
- B. CDPH reserves the right to cancel or terminate this agreement immediately for cause. The Contractor may submit a written request to terminate this agreement only if CDPH substantially fails to perform its responsibilities as provided herein.
- C. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this agreement.
- D. Agreement termination or cancellation shall be effective as of the date indicated in CDPH's notification to the Contractor. The notice shall stipulate any final performance, invoicing or payment requirements.
- E. Upon receipt of a notice of termination or cancellation, the Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent agreement costs.
- F. In the event of early termination or cancellation, the Contractor shall be entitled to compensation for services performed satisfactorily under this agreement and expenses incurred up to the date of cancellation and any non-cancelable obligations incurred in support of this agreement.

Exhibit E
Additional Provisions

1. Insurance Requirements

A. General Provisions Applying to All Policies

1. Coverage Term – Coverage needs to be in force for the complete term of the Agreement. If insurance expires during the term of the Agreement, a new certificate and required endorsements must be received by the State at least ten (10) business days prior to the expiration of this insurance. Any new insurance must comply with the original Agreement terms.
2. Policy Cancellation or Termination and Notice of Non-Renewal – Contractor shall provide to the CDPH within five (5) business days following receipt by Contractor a copy of any cancellation or non-renewal of insurance required by this Contract. In the event Contractor fails to keep in effect at all times the specified insurance coverage, the CDPH may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
3. Premiums, Assessments and Deductibles – Contractor is responsible for any premiums, policy assessments, deductibles or self-insured retentions contained within their insurance program.
4. Primary Clause – Any required insurance contained in this Agreement shall be primary and not excess or contributory to any other insurance carried by the CDPH.
5. Insurance Carrier Required Rating – All insurance companies must carry an AM Best rating of at least “A–” with a financial category rating of no lower than VI. If Contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.
6. Endorsements – Any required endorsements requested by the CDPH must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
7. Inadequate Insurance – Inadequate or lack of insurance does not negate Contractor’s obligations under the Agreement.
8. Use of Subcontractors - In the case of Contractor’s utilization of Subcontractors to complete the contracted scope of work, Contractor shall include all Subcontractors as insured under Contractor’s insurance or supply evidence of the Subcontractor’s insurance to the CDPH equal to policies, coverages, and limits required of Contractor.

B. Insurance Coverage Requirements

Contractor shall display evidence of certificate of insurance evidencing the following coverage:

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Additional Provisions

1. Commercial General Liability – Contractor shall maintain general liability with limits not less than \$1,000,000 per occurrence for bodily injury and property damage combined with a \$2,000,000 annual policy aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent Contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured Agreement. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to Contractor's limit of liability. The policy shall be endorsed to include, "The State of California, its officers, agents and employees, are included as additional insured, but only with respect to work performed for the state of California under this agreement." This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.
2. Automobile Liability (when required) – Contractor shall maintain motor vehicle liability insurance with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. Should the scope of the Agreement involve transportation of hazardous materials, evidence of an MCS-90 endorsement is required. The policy shall be endorsed to include, "The State of California, its officers, agents and employees, are included as additional insured, but only with respect to work performed for the state of California under this agreement." This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.
3. Worker's Compensation and Employer's Liability (when required) – Contractor shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Agreement. Employer's liability limits of \$1,000,000 are required. When work is performed on State owned or controlled property the policy shall contain a waiver of subrogation endorsement in favor of the State. This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.
4. Professional Liability (when required) – Contractor shall maintain professional liability covering any damages caused by a negligent error act or omission with limits not less than \$1,000,000 per occurrence and \$1,000,000 policy aggregate. The policy's retroactive date must be displayed on the certificate of insurance and must be before the date this Agreement was executed or before the beginning of Agreement work.
5. Environmental/Pollution Liability (when required) – Contractor shall maintain pollution liability for limits not less than \$1,000,000 per claim covering Contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site as well as transportation and proper disposal of hazardous materials. The policy shall be endorsed to include, "The State of California, its officers, agents and employees,

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Additional Provisions

are included as additional insured, but only with respect to work performed for the state of California under this agreement.” This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.

6. Aircraft Liability (when required) - Contractor shall maintain aircraft liability with a limit not less than \$3,000,000. The policy shall be endorsed to include, “The State of California, its officers, agents and employees, are included as additional insured, but only with respect to work performed for the state of California under this agreement.” This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.

NONDISCRIMINATION CLAUSE (OCP-1)

STD. 17A (Rev. 10/2019)

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, religious creed, marital status, denial of family and medical care leave, ancestry, national origin, medical condition (cancer/genetic characteristics), age (40 and above), disability (mental and physical) including HIV and AIDS, denial of pregnancy disability leave or reasonable accommodation. Contractor and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, §12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs, tit. 2, §7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12990 (a)–(f), are incorporated into this contract by reference and made a part hereof as if set forth in full (Cal. Code Regs, tit. 2, §7285.0 et seq.). 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.

2. This Contractor shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under contract.

Exhibit G
Restrictions and Requirements for the
Use and Disclosure of HIV/AIDS Public Health Data

This Attachment sets forth the HIV/AIDS-specific information use and disclosure requirements that Contractor is obligated to follow (in addition to all other confidentiality requirements set forth in the contract and other attachments thereto) with respect to all HIV/AIDS Public Health data disclosed to Contractor by the California Department of Public Health (CDPH).

I. Definitions: For purposes of this Agreement, the following definitions shall apply:

- A. HIV/AIDS Public Health Data: "HIV/AIDS Public Health data" means confidential public health record or records collected or maintained by the CDPH Office of AIDS Programs, including but not limited to the AIDS Drug Assistance Program (ADAP), the Pre-Exposure Prophylaxis Assistance Program (PrEP-AP), and the HIV Care Program relating to human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS), containing personally identifying information, that were developed or acquired by a state public health agency, or an agent of that agency." Confidential public health record or records" is defined in Health and Safety (H&S) Code section 121035, subdivision (c), and means "any paper or electronic record maintained by the department or a local health department or agency, or its agent, that includes data or information in a manner that identifies personal information, including, but not limited to, name, social security number, address, employer, or other information that may directly or indirectly lead to the identification of the individual who is the subject of the record." HIV/AIDS Public Health data includes, but is not limited to: client name (first, middle initial, last), date of birth, and Social Security Number.
- B. Disclosure: "Disclosure" means the release, transfer, provision of, access to, or divulging in any other manner of information. "Disclosure" includes the disclosure, release, transfer, dissemination, or communication of all or any part of any confidential research record orally, in writing, or by electronic means to any person or entity, or providing the means for obtaining the records (H&S Code sections 121035 and 121125).
- C. Use: "Use" means the sharing, employment, application, utilization, examination, or analysis of information.

II. Legal Authority for Disclosure and Use of HIV/AIDS Public Health Data: The legal authority for CDPH to collect, use, and disclose HIV/AIDS Public Health Data, and for Contractor to receive and use HIV/AIDS Public Health Data is as follows:

A. General Legal Authority:

- 1. Office of Aids (OA): H&S Code section 131019, provides as follows: "There is in the State Department of Public Health an Office of AIDS. The State Department of Public Health, Office of AIDS, shall be the lead agency within the state, responsible for coordinating state programs, services, and activities relating to the human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), and AIDS related conditions (ARC)."
- 2. Office of Aids (OA): H&S Code section 131051, provides as follows: "The duties, powers, functions, jurisdiction, and responsibilities transferred to the State Department of Public Health shall, pursuant to the act that added this section, include all of the following previously performed by the former State Department of Health Services: (a) Under the jurisdiction of the Deputy Director for Prevention Services: (1) The Office of AIDS, including but not limited to: (A) The AIDS Drug Assistance Program (Chapter 6 (commencing with Section 120950) of Part 4 of Division 105).... (C) The CARE Services Program, provided for pursuant to the federal Ryan White CARE Act, 42 U.S.C. Section 300ff, (D) The CARE/Health Insurance Premium Payment Program (federal Ryan White

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CARE Act, 42 U.S.C. Sec. 300ff)... (G) The AIDS Case Management Program (federal Ryan White CARE Act, 42 U.S.C. Sec. 300ff; Chapter 2 (commencing with Section 120815) of Part 4 of Division 105).”

B. AIDS Drug Assistance Program (ADAP) Legal Authority:

1. Legislative Intent for Drug Assistance: H&S Code section 120950, subdivision (b), provides as follows: “For reasons of compassion and cost effectiveness, the State of California has a compelling interest in ensuring that its citizens infected with the HIV virus have access to these drugs.”
2. Subsidy for Drug Treatment: H&S Code section 120950, subdivision (c), provides as follows: “The department subsidizes the cost of these drugs for persons who do not have private health coverage, are not eligible for Medi-Cal, or cannot afford to purchase the drug privately. The subsidy program is funded through state and federal sources.”
3. Establishment of ADAP: H&S Code section 120955, subdivision (a)(1), provides as follows: “ To the extent that state and federal funds are appropriated in the annual Budget Act for these purposes, the director shall establish and may administer a program to provide drug treatments to persons infected with human immunodeficiency virus (HIV), the etiologic agent of acquired immunodeficiency syndrome (AIDS).”
4. Payer of Last Resort: H&S Code section 120955, subdivision (h), provides as follows: “Reimbursement under this chapter shall not be made for any drugs that are available to the recipient under any other private, state, or federal programs, or under any other contractual or legal entitlements, except that the director may authorize an exemption from this subdivision where exemption would represent a cost savings to the state.”
5. Disclosure Permitted for ADAP Administration and Coordination of Client Eligibility: H&S Code section 120970, subdivision (i), provides as follows: “All types of information, whether written or oral, concerning a client, made or kept in connection with the administration of ADAP services, which includes subsidizing costs associated with health care service plan contracts and health insurance premium payment assistance, shall be confidential, and shall not be used or disclosed except ... for purposes directly connected with the administration of the program,” (paragraph 1); and “for coordinating client eligibility with programs funded by the federal Ryan White HIV/AIDS Program (Ryan White HIV/AIDS Treatment Extension Act of 2009, (Public Law 111-87, 42 U.S.C. Sec. 201, et seq.))” (paragraph 2).

C. Pre-Exposure Prophylaxis Assistance Program (PrEP-AP) Legal Authority:

1. General Authority: H&S Code section 120972, subdivision (a), provides as follows: “To the extent that funds are available for these purposes, the director may establish and administer a program within the department’s Office of AIDS to subsidize certain costs of medications for the prevention of HIV infection and other related medical services, as authorized by this section....”
2. Disclosure Permitted for PrEP-AP Administration: H&S Code section 120972, subdivision (i), provides as follows: “All types of information, whether written or oral, concerning a client, made or maintained in connection with the administration of this program, shall be confidential, and shall not be used or disclosed except for any of the following: (1) For purposes directly connected with the administration of the program. (2) If disclosure is otherwise authorized by law.”

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D. California HIV/AIDS Disclosure Authority:

1. Disclosure Permitted for Public Health Purposes: H&S Code section 121025, subdivision (a), provides as follows: "Public health records relating to [HIV/AIDS], containing personally identifying information, that were developed or acquired by a state or local public health agency, or an agent of that agency, are confidential and shall not be disclosed, except as otherwise provided by law for public health purposes...."
2. Disclosure Permitted to Carry Out the Investigation, Control, or Surveillance Duties of CDPH and Contractor: H&S section 121025, subdivision (b), provides as follows: "In accordance with subdivision (g) of section 121022, a state or local public health agency, or an agent of that agency, may disclose personally identifying information in public health records... to other local, state, or federal public health agencies... when the confidential information is necessary to carry out the duties of the agency... in the investigation, control, or surveillance of disease, as determined by the state or local public health agency."
3. Only Minimum Necessary Disclosure Permitted: H&S Code section 121025, subdivision (c), provides as follows: "Any disclosures authorized... shall include only the information necessary for the purpose of that disclosure...."
4. Agreement Required: H&S Code section 121025, subdivision (c), provides as follows: "Except as provided in paragraphs (1) to (3), inclusive... any disclosure authorized by subdivision (a) or (b) shall not be made without written authorization as described in subdivision (a)...."
5. Disclosure for the Purpose of Facilitating Appropriate HIV/AIDS Medical Care and Treatment: H&S Code section 121025, subdivision (c)(2)(A), provides as follows: "State public health agency HIV surveillance staff, HIV prevention staff, AIDS Drug Assistance Program staff, and care services staff may further disclose the information to local public health agency staff, who may further disclose the information to the HIV-positive person who is the subject of the record, or the health care provider who provides his or her HIV care, for the purpose of proactively offering and coordinating care and treatment services to him or her."
6. State and Local Breach Investigation: H&S Code section 121022, subdivision (h), provides as follows: "(1) Any potential or actual breach of confidentiality of HIV-related public health records shall be investigated by the local health officer, in coordination with the department, when appropriate. The local health officer shall immediately report any evidence of an actual breach of confidentiality of HIV-related public health records at a city or county level to the department and the appropriate law enforcement agency. (2) The department shall investigate any potential or actual breach of confidentiality of HIV-related public health records at the state level, and shall report any evidence of such a breach of confidentiality to an appropriate law enforcement agency."

III. Disclosure Restrictions: The Contractor and its employees or agents, shall protect from unauthorized disclosure any HIV/AIDS Public Health Data. The Contractor shall not disclose, except as otherwise specifically permitted by the contract between CDPH and Contractor, any HIV/AIDS Public Health Data to anyone other than CDPH, Office of AIDS, ADAP Branch, PrEP-AP, and HIV Care Branch staff. Contractor and its employees and agents shall not disclose any HIV/AIDS Public Health Data to persons who are not authorized by statute to receive such information, except if disclosure is required by state or federal law.

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- IV. Use Restrictions: The Contractor and its employees or agents, shall not use any HIV/AIDS Public Health Data for any purpose other than carrying out the Contractor's obligations under the contract between CDPH and Contractor (compare HIV/AIDS Public Health client data against Medi-Cal beneficiary data and provide results to CDPH), pursuant to the statutes and regulations set forth in Section II, above, or as otherwise allowed or required by state or federal law.
- V. Confidentiality Agreements: All employees, agents, including subcontractors, to whom Contractor provides HIV/AIDS Public Health Data received from or created or received by Contractor, agree to the same restrictions and conditions that apply to Contractor with respect to such HIV/AIDS Public Health Data.

Exhibit H
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 California 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, Business Associate is 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 or 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 Business Associate prior to the disclosure of PHI and PI to Business Associate, 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. 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.
- E. 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.
- F. 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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- G. 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 Part 160.103.
- H. Privacy Rule shall mean the HIPAA Regulation that is found at 45 CFR Parts 160 and 164.
- I. Personal Information shall have the meaning given to such term in California Civil Code sections 1798.3 and 1798.29.
- J. 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 Part 160.103.
- K. 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 or PI 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.
- L. Secretary means the Secretary of the U.S. Department of Health and Human Services (HHS) or the Secretary's designee.
- M. Security Incident means a suspected or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI; successful unauthorized access, use, disclosure, modification, or destruction of confidential information, 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.
- N. Security Rule shall mean the HIPAA regulation that is found at 45 CFR Parts 160 and 164.
- O. 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 and PI by Business Associate

Permitted Uses and Disclosures. Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI and PI 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 restricted to a limited PHI and PI dataset, as defined in 45 CFR section 164.514(e)(2), or, if needed, to the minimum necessary, as defined in 45 CFR section 164.514(d), 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.

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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 and PI 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 PHI and PI Aggregation Services.** Use PHI or PI to provide aggregation services to CDPH. PHI and PI aggregation means the combining of PHI and PI created or received by Business Associate on behalf of CDPH with PHI and PI received by Business Associate in its capacity as Business Associate of another covered entity, to permit PHI and PI analyses that relate to the health care operations of CDPH.

B. Prohibited Uses and Disclosures

1. Business Associate shall not disclose PHI or PI about an individual to a health plan for payment or health care operations purposes if the PHI and PI 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 or PI, 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 or PI 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 and PI, including ePHI, 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 and PI 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. Upon request by CDPH, Business Associate will provide CDPH with Business Associate's current and updated policies within five (5) business days.
3. **Security.** To take all steps necessary to ensure the continuous confidentiality, integrity, and availability of all systems and devices holding, processing, or transporting PHI or PI, and to protect physical documents containing PHI or PI. These steps shall include, at a minimum:
 - a. Complying with all of the PHI and PI system security precautions listed in Attachment A, Business Associate PHI and PI Security Requirements;

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- b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of CDPH under the Agreement;
 - c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies;
 - 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 and PI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of the Agreement; and
 - e. Business Associate shall designate a Security Officer to oversee its PHI and PI 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 or PI 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, end the violation, or 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 curing the breach is not possible.
- F. *Availability of Information to CDPH and Individuals.*** To provide access and information:
- 1. To provide access as CDPH may require, and in the time and manner designated by CDPH (upon reasonable notice and during Business Associate's normal business hours) to PHI and PI in a Designated Record Set, to CDPH (or, as directed by CDPH), to an individual, in accordance with 45 CFR Part 164.524. 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 PI, and an individual requests a copy of such information in an electronic format, Business Associate shall provide such

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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 PHI or PI 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 PHI or PI, including employees, contractors and agents of its subcontractors and agents.
- G. Amendment of PHI and PI.** To make any amendment(s) to PHI or PI that CDPH directs or agrees to pursuant to 45 CFR Part 164.526 and, as applicable, Civil Code 1798.35, 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 and PI 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 or PI, and information related to such disclosures, necessary to respond to a proper request by the subject individual for an accounting of disclosures of PHI or PI, 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) and, as applicable, Civil Code section 1798.27. If Business Associate maintains electronic health records for CDPH, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment, or health care operations. If Business Associate acquires electronic health records for CDPH, 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. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.
- J. Breaches and Security Incidents.** During the term of the Agreement, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:
1. **Notice to CDPH.** (1) To notify CDPH **immediately by both telephone call and email** 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 PHI or PI provided to CDPH by the Social Security Administration. If a law enforcement agency determines the notification will impede a criminal investigation, the notification required by this section shall be made to CDPH immediately after the law enforcement agency determines such notification will not compromise the investigation. (2) To notify CDPH **within twenty-four (24) hours by email** 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 PHI or PI affecting the Agreement. If a law enforcement agency determines the notification will impede a criminal investigation, the notification required by this section shall be made to CDPH immediately after the law enforcement agency determines such notification will not compromise the investigation. 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.

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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 ePHI, 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 (<https://www.cdph.ca.gov/Programs/OLS/Pages/Privacy-Office.aspx>).

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 PHI or PI or conduct its own independent investigation, and Business Associate shall cooperate fully in such investigations. Within seventy-two (72) hours of the discovery, Business Associate shall submit an updated "CDPH Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Information Security Officer.
3. **Complete Report.** To provide a complete report of the investigation to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "CDPH Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If CDPH requests information in addition to that listed on the "CDPH Privacy Incident Report" form, Business Associate shall make reasonable efforts to provide CDPH with such information. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "CDPH Privacy Incident Report" form. CDPH will review and approve the determination of whether a breach occurred, and individual notifications are required, and the corrective action plan.
4. **Notification of Individuals.** If the cause of a breach of PHI or PI is attributable to Business Associate or its subcontractors, agents or vendors, Business Associate shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in 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 sixty (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

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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 or PI involves more than five hundred (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 Office of Legal Services California Dept. of Public Health P.O. Box 997377, MS 0506 Sacramento, CA 95899-7377 Email: privacy@cdph.ca.gov Telephone: (877) 421-9634	Chief Information Security Officer Information Security Office California Dept. of Public Health P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413 Email: cdph.infosecurityoffice@cdph.ca.gov Telephone: IT Service Desk (855) 500-0016

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 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 Part 164.520, as well as any changes to such notice.
- B. **Permission by Individuals for Use and Disclosure of PHI and PI.** Provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose PHI and PI, 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 and PI that CDPH has agreed to in accordance with 45 CFR Part 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI and PI.

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D. *Requests Conflicting with HIPAA Rules.* Not request Business Associate use or disclose PHI and PI 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).

VI. *Requests for 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 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 and PI 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 section 164.504(e)(2)(ii)(J).

B. *Termination for Cause by CDPH.* In accordance with 45 CFR section 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:

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HIPAA Business Associate Addendum

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 and/ PI 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 and PI. 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 and PI. Business Associate shall continue to extend the protections of this Addendum to such PHI and PI and shall limit further use of such PHI and PI to those purposes that make the return or destruction of such PHI and PI infeasible. This provision shall apply to PHI and PI that is in the possession of subcontractors or agents of Business Associate.

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 and PI.

B. *Amendment.* The parties acknowledge that federal and state laws relating to electronic PHI and PI 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 and PI. 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 and PI that CDPH in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations, and other applicable laws relating to the security or privacy of PHI and PI.

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

Exhibit H
HIPAA Business Associate Addendum

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 its 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, and applicable state laws.
- F. *Regulatory References.*** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- G. *Survival.*** The respective rights and obligations of Business Associate under Section 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.

Exhibit H
HIPAA Business Associate Addendum

Attachment A
Business Associate PHI and PI Security Requirements

I. Personnel Controls

- A. *Workforce Members Training and Confidentiality.*** Before being allowed access to PHI and PI, all Business Associate's workforce members who will be granted access to PHI and PI must be trained in their security and privacy roles and responsibilities at Business Associates expense and must sign a confidentiality and acceptable PHI and PI use statement. Training must be on an annual basis. Acknowledgments of completed training and confidentiality statements, which have been signed and dated by workforce members must be retained by the Business Associate for a period of six (6) years following contract termination. Business Associate shall provide the acknowledgements within five (5) business days to CDPH if so requested.
- B. *Workforce Members Discipline.*** Appropriate sanctions, including termination of employment where appropriate, must be applied against workforce members who fail to comply with privacy policies and procedures, acceptable use agreements, or any other provisions of these requirements.
- C. *Workforce Member Assessment.*** Before being permitted access to PHI and PI, Business Associate must assure there is no indication its workforce member may present a risk to the security or integrity of PHI and PI. Business Associate shall retain the workforce member's assessment documentation for a period of three (3) years following contract termination.

II. Technical Security Controls

A. *Encryption.*

- All desktop computers and mobile computing devices must be encrypted, in accordance with CDPH Cryptographic Standards or using the latest FIPS 140 validated cryptographic modules.
 - All electronic files that contain PHI and PI must be encrypted when stored on any removable media type device (such as USB thumb drives, CD/DVD, tape backup, etc.), in accordance with CDPH Cryptographic Standards or using the latest FIPS 140 validated cryptographic modules.
 - PHI and PI must be encrypted during data in-transit and at-rest on all public telecommunications and network systems, and at all points not in the direct ownership and control of the Department, in accordance with CDPH Cryptographic Standards or using the latest FIPS 140 validated cryptographic modules.
- B. *Server Security.*** Servers containing unencrypted PHI and PI must have sufficient local and network perimeter administrative, physical, and technical controls in place to protect the CDPH information asset, based upon a current risk assessment/system security review.
- C. *Minimum Necessary.*** Only the minimum amount of PHI and PI required to complete an authorized task or workflow may be copied, downloaded, or exported to any individual device.
- D. *Antivirus software.*** Business Associates shall employ automatically updated malicious code protection mechanisms (anti-malware programs or other physical or software-based solutions) at its network perimeter and at workstations, servers, or mobile computing devices to continuously monitor and take actions against system or device attacks, anomalies, and suspicious or inappropriate activities.

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HIPAA Business Associate Addendum

- E. Patch Management.** All devices that process or store PHI and PI must have a documented patch management process. Vulnerability patching for Common Vulnerability Scoring System (CVSS) “Critical” severity ratings (CVSS 9.0 – 10.0) shall be completed within forty-eight (48) hours of publication or availability of vendor supplied patch; “High” severity rated (CVSS 7.0- 8.9) shall be completed within seven (7) calendar days of publication or availability of vendor supplied patch; all other vulnerability ratings (CVSS 0.1 – 6.9) shall be completed within thirty (30) days of publication or availability of vendor supplied patch, unless prior ISO and PO variance approval is granted.
- F. User Identification and Access Control.** All Business Associate workforce members must have a unique local and/or network user identification (ID) to access PHI and PI. To access systems/applications that store, process, or transmit PHI and PI, it must comply with SIMM 5360-C Multi-factor Authentication (MFA) Standard and NIST SP800-63B Digital Identity Guidelines. The SIMM 5350-C provides steps for determining the Authenticator Assurance Level (AAL), and a set of permitted authenticator types for each AAL (0-3). Note: MFA requirement does not apply to AAL 0.

All Business Associate workforce members are required to leverage FIDO authentication. The FIDO authentication is AAL 3 compliance. FIDO certified devices such as YubiKeys and Windows Hello for Business (WHfB) are the mechanism for user authentication in the Department.

Should a workforce member no longer be authorized to access PHI and PI, or an ID has been compromised, that ID shall be promptly disabled or deleted. User ID’s must integrate with user role-based access controls to ensure that individual access to PHI and PI is commensurate with job-related responsibilities.

	AAL 1	AAL 2	AAL 3
Permitted Authenticator Types	<ul style="list-style-type: none"> - Memorized Secret - Look-Up Secret - Out-of-Band Devices - Single-Factor One-Time Password (OTP) Device - Multi-Factor OTP Device - Single-Factor Cryptographic Software - Single-Factor Cryptographic Device - Multi-Factor Cryptographic Software - Multi-Factor Cryptographic Device 	<ul style="list-style-type: none"> - Multi-Factor OTP Device - Multi-Factor Cryptographic Software - Multi-Factor Cryptographic Device - Memorized Secret <p>plus:</p> <ul style="list-style-type: none"> - Look-Up Secret - Out-of-Band Device - Single-Factor OTP Device - Single-Factor Cryptographic Software - Single-Factor Cryptographic Device 	<ul style="list-style-type: none"> - Multi-Factor Cryptographic Device - Single-Factor Cryptographic Device used in conjunction with Memorized Secret - Multi-Factor OTP device (software or hardware) used in conjunction with a Single-Factor Cryptographic Device - Multi-Factor OTP device (hardware only) used in conjunction with a Single-Factor Cryptographic Software - Single-Factor OTP device (hardware only) used in conjunction with a Multi-Factor Cryptographic Software Authenticator - Single-Factor OTP device (hardware only) used in conjunction with a Single-Factor Cryptographic Software Authenticator and a Memorized Secret.

- G. PHI and PI Destruction.** When no longer required for business needs or legal retention periods, all electronic and physical media holding PHI and PI must be purged from Business Associate’s systems and facilities using the appropriate guidelines for each media type as described in the prevailing “National Institute of Standards and Technology – Special Publication 800-88” – “Media Sanitization Decision Matrix.”
- H. Reauthentication.** Business Associate’s computing devices holding, or processing PHI and PI must comply the Reauthentication requirement, in which a session must be terminated (e.g., logged out) when the specified time is reached. Note: Reauthentication requirement does not apply to Authenticator Assurance Level (AAL) 0.

Exhibit H
 HIPAA Business Associate Addendum

	AAL 1	AAL 2	AAL 3
Reauthentication	30 Days – Fix Period of Time, regardless user activity	12 hours – Fix Period of Time, regardless user activity; 30 minutes inactivity May use one of the authenticators to reauthenticate	12 hours – Fix Period of Time regardless user activity; 15 minutes inactivity Must use both authenticators to reauthenticate

In addition, reauthentication of individuals is required in the following situations:

- When authenticators change
- When roles change
- When the execution of privileged function occurs (e.g., performing a critical transaction)

- I. **Warning Banners.** During a user log-on process, all systems providing access to PHI and PI, must display a warning banner stating that the PHI and PI is confidential, system and user activities are logged, and system and PHI and PI use is for authorized business purposes only. User must be directed to log-off the system if they do not agree with these conditions.
- J. **System Logging.** Business Associate shall ensure its information systems and devices that hold or process PHI and PI are capable of being audited and the events necessary to reconstruct transactions and support after-the-fact investigations are maintained. This includes the auditing necessary to cover related events, such as the various steps in distributed, transaction-based processes and actions in service-oriented architectures. Audit trail information with PHI and PI must be stored with read-only permissions and be archived for six (6) years after event occurrence. There must protect audit information and audit logging tools from unauthorized access, modification, and deletion. There must also be a documented and routine procedure in place to review system logs for unauthorized access.
- K. **Live Data Usage.** Using live data (production data) for testing and training purposes is not allowed. Synthetic data must be used. If synthetic data cannot be generated and/or used, a de-identification process against the live data must be done to reduce privacy risks to individuals. The de-identification process removes identifying information from a dataset so that individual data cannot be linked with specific individuals. Refer to CHHS Data De-Identification Guidelines.
- L. **Privileged Access Management (PAM).** Business Associate who is responsible for setting up and maintaining privileged accounts related to CDPH electronic information resources shall comply with the CDPH PAM Security Standard. Information resources include user workstations as well as servers, databases, applications, and systems managed on-premises and on the cloud.
- M. **Intrusion Detection.** All Business Associate systems and devices holding, processing, or transporting PHI and PI that interact with untrusted devices or systems via the Business Associate intranet and/or the internet must be protected by a monitored comprehensive intrusion detection system and/or intrusion prevention system.

III. Audit Controls

- A. **System Security Review.** Business Associate, to assure that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection for PHI and PI, shall conduct at least, an annual administrative assessment of risk, including the likelihood and magnitude of harm from the unauthorized access, use, disclosure, disruption, modification, or destruction of an information system or device holding processing, or transporting PHI and PI, along with periodic technical security reviews using vulnerability scanning tools and other appropriate technical assessments.

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HIPAA Business Associate Addendum

- B. *Change Control.*** All Business Associate systems and devices holding, processing, or transporting PHI and PI shall have a documented change control process for hardware, firmware, and software to protect the systems and assets against improper modification before, during, and after system implementation.

IV. Business Continuity / Disaster Recovery Controls

- A. *Emergency Mode Operation Plan.*** Business Associate shall develop and maintain technical recovery and business continuity plans for systems holding, processing, or transporting PHI and PI to ensure the continuation of critical business processes and the confidentiality, integrity, and availability of PHI and PI following an interruption or disaster event lasting more than twenty-four (24) hours.
- B. *PHI and PI Backup Plan.*** Business Associate shall have a documented, tested, accurate, and regularly scheduled full backup process for systems and devices holding PHI and PI.

V. Paper Document Controls

- A. *Supervision of PHI and PI.*** PHI and PI in any physical format shall not be left unattended at any time. When not under the direct observation of an authorized Business Associate workforce member, the PHI and PI must be stored in a locked file cabinet, desk, or room. It also shall not be left unattended at any time in private vehicles or common carrier transportation, and it shall not be placed in checked baggage on common carrier transportation.
- B. *Escorting Visitors.*** Visitors who are not authorized to see PHI and PI must be escorted by authorized workforce members when in areas where PHI and PI is present, and PHI and PI shall be kept out of sight of visitors.
- C. *Removal of PHI and PI.*** PHI and PI in any format must not be removed from the secure computing environment or secure physical storage of the Business Associate, except with express written permission of the PHI and PI owner.
- D. *Faxing and Printing.*** Business Associate shall control access to information system output devices, such as printers and facsimile devices, to prevent unauthorized individuals from obtaining any output containing PHI and PI. Fax numbers shall be verified with the intended recipient before transmittal.
- E. *Mailing.*** Mailings of PHI and PI shall be sealed and secured from damage or inappropriate viewing to the extent possible. Mailings which include five hundred (500) or more individually identifiable records of PHI and 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 I Attachment I

San Bernardino County
23-10793



State of California
Health and Human Services Agency



California Department of Public Health

Agreement by Employee/Contractor to Comply with Confidentiality Requirements

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

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

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

Exhibit I Attachment I

San Bernardino County
23-10793

Employee Confidentiality Pledge

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

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

Employee name (print)

Employee Signature

Date

Supervisor name (print)

Supervisor Signature

Date

Name of Employer

PLEASE RETAIN A COPY OF THIS DOCUMENT FOR YOUR RECORDS

Contractor's Release

Instructions to Contractor:

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

Submission of Final Invoice

Pursuant to contract number 23-10793 entered into between the California Department of Public Health (CDPH) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via invoice number(s) _____, in the amount(s) of \$ _____ and dated _____.
If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

Release of all Obligations

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

Repayments Due to Audit Exceptions / Record Retention

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

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

Recycled Product Use Certification

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

Reminder to Return State Equipment/Property (If Applicable)

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

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

Patents / Other Issues

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

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

Contractor's Legal Name (as on contract): San Bernardino County

Signature of Contractor or Official Designee: _____ Date: _____

Printed Name/Title of Person Signing: _____

Distribution: Accounting (Original) Program