STATE OF CALIFORNIA

STANDARD AGREEMENT

STD 213 (CDPH Rev 2/11)

☐ Check here if additional pages are added: page(s)

REGISTRATION NUMBER	AGREEMENT NUMBER
CP 12009461	11-10461

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

STATE AGENCY'S NAME (Also referred to as CDPH or the State)

California Department of Public Health

CONTRACTOR'S NAME (Also referred to as Contractor)

El Dorado County Health and Human Services Agency

2. The term of this Agreement is: October 1, 2011 through September 30, 2014

3. The maximum amount of this Agreement is: $ 3,208,000 Three Million, Two Hundred Eight 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 this Agreement.

Exhibit A – Scope of Work	7 pages
Exhibit B – Budget Detail and Payment Provisions	6 pages
Exhibit B, Attachment I – Budget (Year 1)	4 pages
Exhibit B, Attachment II – Budget (Year 2)	3 pages
Exhibit B, Attachment III – Budget (Year 3)	3 pages
Exhibit B, Attachment IV –Budget Detail Justifications	3 pages
Exhibit C * – General Terms and Conditions	GTC 610
Exhibit D (F) – Special Terms and Conditions (Attached hereto as part of this agreement)	25 pages
Exhibit E – Additional Provisions	7 pages
Exhibit F – Contractor's Release	1 page
Exhibit G – Information Confidentiality and Security Requirements	9 pages

ATTEST: SUZANNE ALLEN de SANCHEZ,
Clerk of the Board of Supervisors
By Marie Martinland DEPUTY 2/14/12

Items shown above with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at http://www.ols.dgs.ca.gov/Standard+Language.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

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

El Dorado County Health and Human Services Agency

BY *(Authorized Signature)* — DATE SIGNED *(Do not type)* 2/14/12

PRINTED NAME AND TITLE OF PERSON SIGNING

John R. Knight , Chair, El Dorado County Board of Supervisors

ADDRESS

330 Fair Lane
Placerville, CA 95667

STATE OF CALIFORNIA

AGENCY NAME

California Department of Public Health

BY *(Authorized Signature)* — DATE SIGNED *(Do not type)* 2/28/12

PRINTED NAME AND TITLE OF PERSON SIGNING

Angela Salas, Chief, Contract Management Unit

ADDRESS

1501 Capitol Avenue, Suite 71.5178, MS 1802, PO Box 997377
Sacramento, CA 95899-7377

California Department of General Services Use Only

[X] Exempt per: 99.8

Exhibit A
Scope of Work

1. Service Overview

Contractor agrees to provide to the California Department of Public Health (CDPH) the services described herein to operate the Women, Infants and Children (WIC) Nutrition Program and to comply with all fiscal, administrative and operational requirements as outlined in this Agreement and referenced in Exhibit E, Section 1; WIC Program Federal Regulations (Title 7, Code of Federal Regulations, Part 246); United States Department of Agriculture (USDA) Food and Nutrition Services (FNS) guidelines and instructions; the WIC Contract Management Binder (CMB); Primary WIC Program Contact (PWPC) communications; and the WIC Program Manual (WPM). These documents are available on the State WIC Program website at http://www.wicworks.ca.gov/.

2. Service Location

The services shall be provided at approved WIC sites within Contractor's service area, as defined in this provision. Contractor may serve participants who do not live in the service area, at the participant's request, for reasons related to participant convenience or necessity, such as a preference to attend a WIC site near the participant's place of employment. The State may modify an existing service area to reflect changing business needs and demographics by notifying Contractor in writing.

Contractor agrees to provide WIC Program services to:

Eligible residents of El Dorado and Alpine Counties.

3. Service Hours

The services shall be provided during Contractor's normal business hours, excluding holidays, as outlined in the WPM 530-10, as referenced in Exhibit E, Provision 1.

4. Project Representatives

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

California Department of Public Health	**Contractor Name**
Christina Flores	Daniel Nielson
Contract Analyst	Director of Human Services
Telephone: (916) 928-8864	Telephone: (530) 642-7275
Fax: (916) 263-3314	Fax: (530) 295-2638
E-mail: Christina.Flores@CDPH.ca.gov	E-mail: daniel.nielson@edcgov.us

The El Dorado County Officer or employee with responsibility for administering this Agreement is Daniel Nielson, Director, Health and Human Services Agency, or successor.

Exhibit A
Scope of Work

B. Direct all inquires to:

California Department of Public Health	**Contractor Name**
WIC Program	El Dorado County Health and Human Services Agency
Attention: Kerry Wyatt	Attention: Ellen Deutsche
Local Agency Support Branch	Nutrition Services Supervisor
3901 Lennane Drive	937 Spring Street
Sacramento, CA 95834	Placerville, CA 95667
Telephone: (916) 928-8757	Telephone: (530) 621-6170
Fax: (916) 263-3314	Fax: (530) 295-2598
E-mail: Kerry.Wyatt@CDPH.ca.gov	E-mail: ellen.deutsche@edcgov.us

C. Either party may change the information in paragraphs A or B by giving written notice to the other party. These changes shall not require an amendment to this Agreement.

D. Contractor shall designate a PWPC as the person with primary responsibility for day to day operations of the WIC program, and to be the principle liaison to the State WIC Program during the term of this Agreement. Contractor shall provide the State WIC Program with written notice at least seven (7) days in advance if there is a change of the PWPC. In the notice, Contractor shall provide the information regarding the new PWPC required in the CMB Chapter 2, Section I, Paragraph B.

E. The PWPC is accountable for ensuring that the Contractor complies with all fiscal, administrative and operational requirements as outlined in this Agreement.

F. The Contractor shall designate a Registered Dietitian (RD), credentialed by the American Dietetic Association's Commission on Dietetic Registration, as the PWPC. A copy of the proposed candidate's resume with a cover letter explaining how the individual is qualified to manage the WIC operations must be submitted to the State WIC Program for approval. The State WIC Program approval must be received by the Contractor, in writing, prior to a job offer being made and the PWPC performing any work under this Agreement. The State WIC Program shall retain the right to authorize a non-RD as the PWPC with appropriate justification.

5. Scope of Work Changes

A. Pursuant to Health and Safety Code Section 38077 (b)(2), changes and revisions to the Scope of Work contained in the Agreement, utilizing the "allowable cost payment system," may be proposed by the Contractor in writing. Failure to notify the State WIC Program of proposed revisions to the Scope of Work may result in an audit finding.

B. The State WIC Program will respond, in writing, as to the approval or disapproval of all such requests for changes or revisions to the Scope of Work within thirty (30) calendar days of the date the request is received in the State WIC Program. Should the State fail to respond to the Contractor's request within thirty (30) calendar days of receipt, the Contractor's request shall be deemed approved for amendment subject to requirements in Paragraph D of this provision.

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C. The State WIC Program may also request changes and revisions to the Scope of Work. The State will make a good-faith effort to provide the Contractor thirty (30) calendar days advance written notice of said changes or revisions.

D. Pursuant to this paragraph, no changes to the Scope of Work shall take effect until the Agreement is amended and the Amendment is approved as required by law and this Agreement.

6. Services to be Performed

A. Contractor is provided a maximum participant caseload per month for each FFY of the Agreement. The maximum participant caseload is made up of the authorized participant caseload and an unauthorized participant caseload for each budget period. The unauthorized participant caseload is a reserve number of participants that can be allocated to the Contractor if caseload needs to be increased due to: 1) increased number of participants being served or 2) additional funding is received from USDA. The WIC local agency caseload Performance Standard is outlined in Provision 7 of this exhibit; and, the Contractor's Maximum Caseload Per Month for federal fiscal years 2012-2014 is listed below.

Budget Period	Maximum Caseload Per Month
1) FFY 2011/2012	3,375
2) FFY 2012/2013	3,550
3) FFY 2013/2014	3,725

B. Contractor's initial authorized caseload will be granted through a WIC local agency award letter and is effective upon execution of this Agreement. Authorized caseload is used to calculate the base-grant funding amount.

C. If and when the authorized caseload is increased or decreased after the execution of this Agreement, Contractor will receive a WIC local agency award letter. An increase in the authorized caseload will increase the authorized base-grant funding amount. An amendment to this Agreement shall not be required unless the increase in caseload or funding exceeds the maximum caseload or maximum payable for a budget period. The maximum payable is the total dollar amount shown in the Agreement budgets in Exhibit B, Attachments I, II and III.

7. Performance Standard

A. Contractor shall serve one hundred percent (100%) of the authorized caseload per month. If Contractor fails to meet the minimum performance standard described in the CMB, Chapter 2, Section I, Paragraph A, the State WIC Program may reduce Contractor's authorized caseload and base-grant funding.

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B. The State WIC Program reserves the right to adjust the minimum performance standard. The Contractor will be notified, in writing, approximately one hundred and twenty (120) days prior to the effective date of an adjustment. If the State WIC Program reduces the Contractor's authorized caseload, Contractor's funding will be reduced based on the State WIC funding formula. Caseload reductions will not require an amendment to this Agreement.

8. Food Benefits Distribution

Contractor shall issue food benefits and implement a distribution system using the Integrated Statewide Information System (ISIS). Food benefits shall be issued to eligible participants using paper or electronic media, in compliance with all WIC Program Federal Regulations, USDA FNS memos and policy documents, and the WPM 200, 300 and 400 series that cover food benefits distribution and storage, security and fraud prevention, mailing protocol, and participant education.

9. Nutrition Education and Breastfeeding Support Services

A. Contractor shall provide nutrition education to all adult participants and age appropriate nutrition education to child participants in compliance with WIC Program Federal Regulations, the CMB, and the WPM 400 series.

B. Contractor shall promote breastfeeding and provide breastfeeding support as outlined in the WPM 600 series.

C. A minimum standard must be met for nutrition education, and breastfeeding promotion and support expenditures as specified in the CMB, Chapter 2, Section I, Paragraphs C and D.

D. Contractor shall develop and submit a Nutrition Services Plan (NSP) consistent with the nutrition education requirements stated in the WPM 400 series and in accordance with WIC Program Federal Regulations. The NSP and annual updates shall be prepared by an RD or other qualified staff member, and shall be submitted to the State WIC Program for approval by the specified due dates as indicated in the WPM 400 series.

E. Contractor shall inform the public of all services provided under this Agreement, including a description of WIC benefits, the eligibility criteria, the locations of WIC sites and the contact information.

10. Referral Services

Contractor shall provide WIC Program applicants and participants with information on other health-related and public assistance programs and, when appropriate, shall refer applicants and participants to such programs, as required, by Federal Regulations and the WPM 700 series.

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11. Participant Eligibility Verification

Contractor shall certify those persons determined to be eligible for WIC services based on defined criteria in compliance with applicable Federal Regulations and the WPM 200 Series. These regulations and policies prohibit exclusion of participation, denial of benefits, or any other discriminatory behavior on the grounds of race, color, national origin, age, sex, or disability. Additional contract requirements related to non-discrimination and civil rights are defined in Exhibit C, Provision 10; Exhibit D (F), Provision 1; and Exhibit E, Provision 8.

12. Staffing Standards

A. Contractor shall maintain an appropriate staffing pattern to provide WIC services to participants while maintaining a positive customer services environment as outlined in the WPM 130 series. Contractor may employ WIC Nutrition Assistants (WNAs); office support (non-WNAs) staff; RDs; Dietetic Technicians Registered (DTRs); Degreed Nutritionists (DNs); and other staff.

B. Contractor shall employ RDs to perform direct service activities that support participant nutrition needs and oversee the development, implementation, and evaluation of the NSP; the quality assurance plan; nutrition-related education; nutrition assessments; and other activities as listed in WPM 130-10. Contractor shall designate a nutrition education coordinator to oversee nutrition education activities as described in the WPM 400 series.

C. Contractor shall maintain an adequate number of trained staff to ensure all WIC participants are screened, counseled, and referred to appropriate services.

D. Contractor shall maintain an adequate number of WIC Nutrition Assistants (WNA) and certified staff to determine participant eligibility and to counsel participants on technical nutrition topics. All nutrition staff must be trained to counsel participants on breastfeeding and infant feeding issues as described in the WPM 130 series. Contractor shall designate a breastfeeding coordinator to be responsible for breastfeeding promotion and support as described in the WPM 600-10.

13. Other WIC Services

Other WIC Services shall be provided by the Contractor when authorized by the State WIC Program. Funds for these services are allocated to the Contractor through the Authority to Spend (ATS) process as specified in the CMB, Chapter 11. All activities supported by authorized funds must strictly adhere to the performance outcomes identified in the ATS letter. Other WIC services include, but are not limited to, the following:

A. Customer service activities to improve and streamline services that may improve employee effectiveness and efficiency; and nutrition services and activities to support value-enhanced nutrition assessment and participant-centered services;

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B. Projects and activities to improve and enhance WIC services such as the Farmers Market Nutrition Program designed to enhance nutrition education and consumption of fresh fruit and vegetables, the Breastfeeding Peer Counselor Program to support breastfeeding mothers, and participation on committees to coordinate the development and implementation of statewide initiatives; and

C. Targeted projects and initiatives to support or sustain food benefits modifications, staff training, implementation of various program initiations, developing or implementing individual or group participant education strategies, or implementing breastfeeding promotion activities.

14. Vendor Support Services

The Contractor shall ensure sufficient staffing and resources are dedicated to developing and implementing on-going vendor coordination activities. The responsibilities are described in the CMB, Chapter 2, Section I, Paragraph E.

15. Information Technology and Technical Support Services

Contractor shall secure local information technology support services and infrastructure to maintain an appropriate network. The requirements are provided in the CMB Chapter 2, Section I, Paragraph F.

16. Emergency Situation

If Contractor experiences an emergency situation or incident, Contractor shall notify the State WIC Program within twenty-four (24) hours. Contractor shall work collaboratively and cooperatively with appropriate State and local agencies, local assistance centers, and community response teams to schedule enrollment appointments, conduct outreach, and to ensure WIC services are delivered to eligible participants.

17. Independent Research

A. Contractor shall notify the State WIC Program, prior to conducting independent research or collaborating with an outside party, including a university or research institution to conduct independent research using WIC Program data. The draft of any proposed publication by the Contractor or its subcontractor resulting from research projects conducted with funds from this Agreement must be reviewed and approved before publication by the State WIC Program. The State WIC Program shall retain all ownership rights to the data and the data shall be returned to the State WIC Program at the conclusion of the research project.

B. "Independent research" is defined as research, articles, reports, and materials that are not necessary for performance of the Agreement. It is produced by the Contractor and/or an outside source using WIC program data, defined as data obtained from the State WIC Program including but not limited to, WIC participants, WIC staff, and WIC vendors either directly or through a variety of means including but not limited to surveys, focus groups, interviews or indirectly using the statewide database (ISIS) regardless of the funding source.

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C. The Contractor or collaborating party may only use WIC Program data for independent research in compliance with state and federal confidentiality requirements and in accordance with the confidentiality requirements in Exhibit D (F), Provision 13, Confidentiality of Information, of this Agreement. The Contractor may not use or share participant or vendor information if the information personally identifies a participant or vendor, in compliance with Part 7 Code of Federal Regulations, section 246.26, or any person if the information personally identifies an individual, in compliance with the California Civil Code section 1798 et. Seq (the Information Practices Act) . All WIC Program data used for independent research projects and/or shared with any other party shall be de-identified of any data that identifies an individual, participant or vendor.

D. The Contractor will not use the WIC Program data for any purposes other than the independent research project approved by the State WIC Program. The Contractor will return the data to the State WIC Program after publication of the independent research project and will not permit others to use the data or let others link or match the data to any other data set unless such link or match was identified in the research proposal and the proposal was approved by the California Health and Human Services Agency Committee for the Protection of Human Subjects (CPHS). Before approving an independent research project using WIC Program data, the State WIC Program may require the Contractor to enter into a data use and confidentiality agreement to ensure proper use and security of the data. Before providing the data to a subcontractor to conduct an independent research project, the Contractor shall obtain approval of the State WIC Program and shall require the subcontractor to enter into a data use and confidentiality agreement with the Contractor approved by the State WIC Program. Any research project using human subjects shall require approval of the California Health and Human Services Agency Committee for the Protection of Human Subjects (CPHS).

E. The Contractor may be required to complete research projects and publications according to the terms of the Agreement. Such projects and publications shall be “works” and the intellectual property of the CDPH, subject to the provisions in Exhibit D (F), Provision 10, Intellectual Property Rights, of this Agreement. Use of any WIC Program Data for these research projects or publications shall be subject to the data use requirements in subsections C and D of this section.

F. Prior to publication, a draft of any publication by the Contractor or its subcontractor resulting from independent research using WIC Program data must be reviewed and approved for publication by the State WIC Program.

G. “Publication” is defined as, peer reviewed journals, articles, and any other method of information sharing that is available to the general public or segment of the public.

Exhibit B
Budget Detail and Payment Provisions

1. Invoicing and Payment

A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State WIC Program agrees to compensate the Contractor for actual allowable expenditures incurred in accordance with the authorized budgets attached hereto.

B. Invoices shall include the Agreement Number and shall be submitted as one (1) original invoice in arrears not more frequently than monthly. Each monthly invoice shall be submitted for payment no more than forty-five (45) calendar days following the close of each month, unless an alternate deadline is agreed to in writing by the State WIC Program. Invoices are to be submitted to:

California Department of Public Health
WIC Program
Attention: Local Agency Fiscal Section
3901 Lennane Drive
Sacramento, CA 95834

The State WIC Program, 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 WIC Program and shall not require an amendment to this Agreement.

C. The information to be included in the invoice and the detailed instructions regarding the completion of the invoice to be submitted to the State WIC Program are provided in the Contract Management Binder (CMB) Chapter 12, Section II.

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 the Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any provisions of this Agreement.

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

C. If sufficient federal funds are not allocated to carry out the WIC Program, the State may, upon thirty (30) days advance notice, void the Agreement or reduce the maximum payable. The Contractor's budget and Scope of Work may be renegotiated with the State based on available federal funds.

D. If the State cancels the Agreement and/or reduces the authorized funding amount, the Contractor shall not submit an invoice for, and the State shall not reimburse allowable costs in excess of, the adjusted authorized amount.

Exhibit B
Budget Detail and Payment Provisions

3. Prompt Payment Clause

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

4. Amounts Payable

A. The amounts payable under this Agreement shall not exceed:

1) $952,000 for the budget period of 10/01/11 through 09/30/12.
2) $1,069,000 for the budget period of 10/01/12 through 09/30/13.
3) $1,187,000 for the budget period of 10/01/13 through 09/30/14.

B. Reimbursement shall be made for allowable expenses up to the amount annually encumbered commensurate with the state fiscal year in which services are performed and/or goods are received.

C. The Contractor must maintain records of actual expenditures for each fiscal year covered by the term of this Agreement. These documents must be retained for three (3) years following the final payment under this Agreement. The State may periodically request documentation for expenditures to verify that the cost is allowable and necessary.

5. Timely Submission of Final Invoice

A. A final undisputed invoice shall be submitted for payment no more than one hundred fifty (150) days following the expiration or termination date of this Agreement, unless a later or alternate deadline is agreed to in writing by the State WIC Program. Said invoice should be clearly marked “Final Invoice,” thus indicating that all payment obligations of the State under this Agreement have ceased and that no further payments are due or outstanding.

B. The State WIC Program may, at its discretion, choose not to honor any delinquent final invoice submitted after the deadline set forth in paragraph A of this provision if the Contractor fails to obtain prior written State WIC Program approval of an alternate final invoice submission deadline. Written approval shall be sought from the State WIC Program prior to the expiration or termination date of this Agreement.

C. The Contractor is hereby advised of its obligation to submit, with the final invoice of the three (3) year contract, a **“Contractor’s Release (Exhibit F)”** acknowledging submission of the final invoice to the State WIC Program and certifying the approximate percentage amount, if any, of recycled products used in performance of this Agreement.

Exhibit B
Budget Detail and Payment Provisions

6. Allowable Line Item Shifts

A. Subject to prior review and approval of the State WIC Program, a maximum total of four (4) line item shifts of up to fifteen percent (15%) of the Agreement budget year total, not to exceed a cumulative maximum total of one hundred thousand dollars ($100,000) in an Agreement budget year are allowed, so long as the Agreement budget year total neither increases nor decreases, as stated in Health and Safety Code, Chapter 386, Section 38081.1.

   The $100,000 maximum limit shall be assessed annually and automatically adjusted by the State in accordance with cost-of-living indexes. Said adjustments shall not require a formal Agreement amendment. The State WIC Program shall annually inform the Contractor in writing of the adjusted maximum. The annual maximum limit will be stated in the CMB Chapter 12, Section IV.

B. Line item shifts meeting these criteria shall not require a formal Agreement amendment.

C. The Contractor shall adhere to State WIC Program requirements regarding the process to follow in requesting approval to make line item shifts. A line item shift is the transfer of funds in a budget year (maximum payable) from one (1) budget line item to another. Instructions on how to request line item shifts are detailed in the CMB Chapter 12, Section IV.

D. Line item shifts may be proposed/requested by either the State WIC Program or the Contractor. Upon the execution of an amendment to this Agreement within a budget period, the Contractor may submit new additional line item shifts under the guidelines in this provision and the CMB.

7. Expense Allowability / Fiscal Documentation

A. Invoices, received from a Contractor and accepted and/or submitted for payment by the State WIC Program, shall not be deemed evidence of allowable Agreement costs.

B. The Contractor shall maintain for review and audit and supply to the State WIC Program upon request, adequate documentation of all expenses claimed pursuant to this Agreement to permit a determination of expense allowability.

C. If the allowability or appropriateness of an expense cannot be determined by the State because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the State. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.

Exhibit B
Budget Detail and Payment Provisions

D. If travel is a reimbursable expense, receipts must be maintained to support the claimed expenditures. For more information on allowable travel, per diem expenses, and required documentation are detailed in the CMB Chapter 9.

E. Costs and/or expenses deemed unallowable are subject to recovery by the State as outlined in this Exhibit, Provision 8.

8. Recovery of Overpayments

A. The Contractor agrees that claims based upon a contractual agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by the State and/or Federal Government by one of the following options:

1) The Contractor's remittance to the State of the full amount of the audit exception within thirty (30) days following the State's request for repayment;
2) A repayment schedule that is agreeable to both the State and the Contractor; or
3) The State may offset the amount of the audit finding by reducing any outstanding invoice from the Contractor by that amount.

B. The State reserves the right to select which option will be employed and the Contractor will be notified by the State, in writing, of the claim procedure to be utilized. Guidelines for recovery of overpayment are detailed in the CMB Chapter 12, Section VII.

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 an examination finding is mailed to the Contractor, beginning thirty (30) days after the Contractor's receipt of the State's demand for repayment.

D. If the Contractor has filed an 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 decision, the Contractor shall repay, to the State, the over-claimed or disallowed expenses, plus the accrued interest. Interest accrues from the Contractor's first receipt of the State's notice requesting reimbursement of questioned audit costs or disallowed expenses.

9. Report of Actual Expenditures

A. A Report of Actual Expenditures, described in the CMB Chapter 13, shall be submitted within seventy-five (75) calendar days following September 30th of each budget period. The Report of Actual Expenditures shall be based on actual expenditures, unliquidated obligations, and the time study (as described in Provision 15 of this Exhibit) initiated and completed by the Contractor for that budget period. If a revision of the Report of Actual Expenditures is necessary, it shall be submitted to the State WIC Program by March 1st of the year following the end of the budget period.

Exhibit B
Budget Detail and Payment Provisions

B. A list of all unliquidated obligations shall be submitted to the State WIC Program with the Report of Actual Expenditures within seventy-five (75) calendar days following September 30th of each budget period. As the unliquidated obligation is liquidated, an invoice may be submitted to the State WIC Program for payment. All unliquidated obligations shall be liquidated by the submission of the "Final Invoice" as stated in Provision 14 of this Exhibit.

10. Funding

The Contractor may not spend funds prior to receiving a WIC local agency award letter or written authority from the State WIC Program through the Authority to Spend (ATS) process. Award letters are sent prior to the beginning of the three (3) year Agreement; and, when/if the Maximum Amount Payable is increased during the term of the Agreement. If funds are spent prior to authorization, the Contractor is subject to sanctions. The sanctions include, but are not limited to, recovery of the overpayment (CMB Chapter 12, Sections VII), payment denial or withhold (CMB Chapter 12, Section VIII), and/or immediate termination (Exhibit E, Provision 2) of this Agreement.

11. Authority to Spend Process

Upon full execution of this Agreement, an ATS letter may be sent to the Contractor to provide additional funds authorized during the Agreement term for Other WIC Services pursuant to Exhibit A, Provision 13. CMB Chapter 11 contains the ATS guidelines and process.

12. Payment Denial and Withhold

A. This provision supplements Exhibit D(F), Special Terms and Conditions, Provision 22, entitled "Payment Withholds".

B. The State WIC Program reserves the right to deny or withhold payment of any outstanding invoice for any one or combination of exceptions. The detailed listing of the exceptions is found in the CMB Chapter 12, Section VIII.

13. Charges/Reductions for Noncompliance

The State may recover up to eighteen percent (18%) of the annual authorized funds for a budget period of this Agreement for the following reasons:

1) Failure to spend, document, or report the required minimum of one sixth (1/6) of authorized funds on Nutrition Education Services for each budget period of this Agreement in accordance with the CMB Chapter 2, Section I, Paragraph C, and/or
2) Failure to spend, document, or report the required minimum amount of the total agreement expenditures per pregnant and/or breastfeeding participant for each budget period of this Agreement in accordance with the CMB Chapter 2, Section I, paragraph D.

Exhibit B
Budget Detail and Payment Provisions

14. Final Invoice of a Budget Period

The final invoice of a budget period shall be submitted prior to one hundred fifty (150) days following the end of the budget period. If a final invoice is not received by this date, the last original invoice received from the Contractor shall be considered the final invoice even if not stamped with the words "Final Invoice." The State WIC Program reserves the right to deny payment of the final invoice if it is received after the due date.

15. Time Study

The Contractor shall, in each budget period of this Agreement, complete a time study. Each time study shall cover a minimum of one (1) week a month or one (1) month per quarter. All staff providing WIC services, directly and indirectly, are to be included in the time study. The time study must accurately document time spend on the Farmers' Market Nutrition Program, Breastfeeding Peer Counseling, and four (4) Federal WIC cost categories: 1) general administration, 2) client services, 3) nutrition education, and 4) breastfeeding, as detailed in the CMB Chapter 13, Section III.

16. Prospective and Advance Payments

The State WIC Program, upon determination that a prospective and/or an advance payment is essential for the effective implementation of the WIC program, may provide a prospective and/or an advance payment to the Contractor based on this Agreement subject to the requirements in the CMB Chapter 6. All requests for payments must be in writing and be accompanied by proof of liability insurance as described in Exhibit E, Provision 4.

17. Indirect Costs Percentage

The Contractor shall provide to the State WIC Program, upon request, the indirect costs percentage authorized for their agency through a cost allocation plan or by the federal agency who issues to them their largest federal grant. The CMB Chapter 2, Section I, Paragraph I provides the maximum indirect rate, guidelines and requirements.

18. Budget Detail

The Contractor shall submit to the State WIC Program the Budget Detail as described in the CMB Chapter 3, Budget. The Budget Detail will be reviewed by and kept on file at the State WIC Program. The Budget Detail must be updated by the Contractor when the Maximum Amount Payable is increased, when a Line Item Shift is requested and when otherwise requested by the State WIC Program.

Exhibit B, Attachment I
Budget
Year 1
10/01/11 through 09/30/12

Budget Line-Item			Total
1. **Personnel***			$ 705,019
Salaries & Wages	$ 451,747		
Fringe Benefits	$ 253,272		
2. **Operating Expenses**			$ 71,466
3. **Capital Expenditures** (Major Equipment)			$ 85,930
4. **Other Costs** (Subcontracts)			$
5. **Indirect Costs**** (Indirect Rate 13.3%)			$ 89,585
Total			**$ 952,000**

Funds allocated and invoiced under this agreement shall only apply to the WIC local agency program.

*Total of "Salaries & Wages" and 'Fringe Benefits" must equal the total of the "Personnel" line item.

**The Indirect Costs maximum percentage of the "Personnel" line item is shown in the CMB, Chapter, Section 1, Paragraph I.

BUDGET DETAIL
PERSONNEL JUSTIFICATION WORKSHEET
OCTOBER 1, 2011 - SEPTEMBER 30, 2012, YEAR 1

Contractor: El Dorado County Health and Human Services Agency

		Maximum Amount Payable				Authorized Funding Amount			
A Row Number which must be entered on corresponding Duty Statement	B Agency Job Classification or Job Title Only **one** classification can be entered per line.	C Full Time Equivalents (FTE) budgeted for the classification (i.e. 3.5)	D Salary Range for FTEs in the classification	E Total Budgeted for all FTEs in Each Classification	F ADC	G Full Time Equivalents (FTE) budgeted for the classification (i.e. 3.5)	H Salary Range for FTEs in the classification	I Total Budgeted for all FTEs in Each Classification	J ADC
1	Nutrition Services Supervisor	1.000	54,642-72,168	$ 72,168		1.000	54,642-72,168	$ 72,168	
2	Nutritionist	1.200	51,088-63,623	$ 61,800		0.600	51,088-63,623	$ 40,574	
3	Program Assistant	7.300	41,050-44,966	$ 317,779		7.300	41,050-44,966	$ 317,779	
4									
5									
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12									
DO NOT COMPLETE TOTALS IF A CONTINUATION FORM IS USED. PUT TOTALS ON LAST CONTINUATION FORM USED. Continuation form used _____ (Enter "X" if used)	Total Full Time Equivalent Positions	9.500				8.900			
	(1) Total Salaries and Wages Column E or H Total (transfer to funding summary)			$ 451,747.00				$ 430,521.00	
	(2) Total Fringe Benefits (calculate separately) (transfer to funding summary)			$ 253,272.00				$ 240,629.00	
	Total Personnel (1 + 2) (transfer to line item #1 of the funding summary)			$ 705,019.00				$ 671,150.00	

BUDGET DETAIL WORKSHEET
OPERATING EXPENSES
OCTOBER 1, 2011 - SEPTEMBER 30, 2012, YEAR 1

Contractor: El Dorado County Health and Human Services Agency

A	B Category	C Maximum Funding Amount	D Authorized Funding Amount	E A D C	F Description of Change (See instructions in CMB Chapter 3, Section III when completing columns E and F)
REQUIRED CATEGORIES					
1	EQUIPMENT/FURNITURE	$ 20,569	-		
2	POSTAGE	$ 2,500	$ 1,000		
3	PRINTING/DUPLICATING	$ 6,320	$ 6,320		
4	SPACE	$ -	$ -		
5	SUPPLIES	$ 4,457	$ 3,142		
6	TRAINING	$ 12,030	-		
7	TRAVEL	$ 8,350	$ 6,032		
8	UTILITIES	$ 13,793	$ 13,793		
ADDITIONAL CATEGORIES					
9	Memberships, Subscriptions, and Professional Certifications	$ 3,347	$ 3,347		
10	Recruitment	$ 100	-		
11					
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22					
Funds allocated and invoiced under this agreement shall only apply to the WIC local agency program.					
CATEGORIES TOTAL (Do not enter totals if a continuation page is used) Continuation Page Used ___ (Enter "X" if used)		$ 71,466	$ 33,634		

BUDGET DETAIL WORKSHEET
CAPITAL EXPENDITURES
OCTOBER 1, 2011 - SEPTEMBER 30, 2012, YEAR 1

Contractor: El Dorado County Health and Human Services Agency

A	B Items	C Maximum Funding Amount	D Authorized Funding Amount	E A D C	F Description of Change (See instructions in CMB Chaper 3, Section IV when completing columns E and F)
1	Video Conferencing Equipment	$ 85,930			
2					
3					
4					
5					
6					
7					
8					
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24					
Funds allocated and invoiced under this agreement shall only apply to the WIC local agency program.					
ITEMS TOTAL (Do not enter totals if a continuation page is used) Continuation Page Used ___ (Enter "X" if used)		$ 85,930	-		

Exhibit B, Attachment II
Budget
Year 2
10/01/12 through 09/30/13

Budget Line-Item			Total
1. **Personnel***			$ 713,059
Salaries & Wages	$ 452,808		
Fringe Benefits	$ 260,251		
2. **Operating Expenses**			$ 263,365
3. **Capital Expenditures** (Major Equipment)			$
4. **Other Costs** (Subcontracts)			$
5. **Indirect Costs**** (Indirect Rate 13.3%)			$ 92,576
Total			**$ 1,069,000**

Funds allocated and invoiced under this agreement shall only apply to the WIC local agency program.

*Total of "Salaries & Wages" and 'Fringe Benefits" must equal the total of the "Personnel" line item.

** The Indirect Costs maximum percentage of the "Personnel" line item is shown in the CMB, Chapter, Section 1, Paragraph I.

BUDGET DETAIL
PERSONNEL JUSTIFICATION WORKSHEET
OCTOBER 1, 2012 - SEPTEMBER 30, 2013, YEAR 2

Contractor: El Dorado County Health and Human Services Agency

		Maximum Amount Payable				Authorized Funding Amount			
A Row Number which must be entered on corresponding Duty Statement	B Agency Job Classification or Job Title Only **one** classification can be entered per line.	C Full Time Equivalents (FTE) budgeted for the classification (i.e. 3.5)	D Salary Range for FTEs in the classification	E Total Budgeted for all FTEs in Each Classification	F ADC	G Full Time Equivalents (FTE) budgeted for the classification (i.e. 3.5)	H Salary Range for FTEs in the classification	I Total Budgeted for all FTEs in Each Classification	J ADC
1	Nutrition Services Supervisor	1.000	54,642-72,168	$ 72,168		1.000	54,642-72,168	$ 72,168	
2	Nutritionist	1.200	53,654-63,623	$ 62,861		0.600	53,654-63,623	$ 40,574	
3	Program Assistant	7.300	41,050-44,966	$ 317,779		7.300	41,050-44,966	$ 317,779	
4									
5									
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12									
DO NOT COMPLETE TOTALS IF A CONTINUATION FORM IS USED. PUT TOTALS ON LAST CONTINUATION FORM USED. Continuation form used _____ (Enter "X" if used)	Total Full Time Equivalent Positions	9.500				8.900			
	(1) Total Salaries and Wages Column E or H Total (transfer to funding summary)			$ 452,808.00				$ 430,521.00	
	(2) Total Fringe Benefits (calculate separately) (transfer to funding summary)			$ 260,251.00				$ 247,184.00	
	Total Personnel (1 + 2) (transfer to line item #1 of the funding summary)			$ 713,059.00				$ 677,705.00	

BUDGET DETAIL WORKSHEET
OPERATING EXPENSES
OCTOBER 1, 2011 - SEPTEMBER 30, 2012, YEAR 2

Contractor: El Dorado County Health and Human Services Agency

A	B Category	C Maximum Funding Amount	D Authorized Funding Amount	E A D C	F Description of Change (See instructions in CMB Chapter 3, Section III when completing columns E and F)
REQUIRED CATEGORIES					
1	EQUIPMENT/FURNITURE	$ 50,000	-		
2	POSTAGE	$ 8,000	$ 1,000		
3	PRINTING/DUPLICATING	$ 25,000	$ 4,632		
4	SPACE	$ -	$ -		
5	SUPPLIES	$ 15,000	$ 1,650		
6	TRAINING	$ 50,000	-		
7	TRAVEL	$ 25,000	$ 3,410		
8	UTILITIES	$ 13,793	$ 13,793		
ADDITIONAL CATEGORIES					
9	Memberships, Subscriptions, and Professional Certifications	$ 3,394	$ 2,594		
10	Breastfeeding Promotion	$ 72,678	-		
11	Recruitment	$ 500	-		
12					
13					
14					
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22					
Funds allocated and invoiced under this agreement shall only apply to the WIC local agency program.					
CATEGORIES TOTAL (Do not enter totals if a continuation page is used) Continuation Page Used ___ (Enter "X" if used)		$ 263,365	$ 27,079		

Exhibit B, Attachment III
Budget
Year 3
10/01/13 through 09/30/14

Budget Line-Item			Total
1. **Personnel***			$ 721,450
Salaries & Wages	$ 453,870		
Fringe Benefits	$ 267,580		
2. **Operating Expenses**			$ 369,834
3. **Capital Expenditures** (Major Equipment)			$
4. **Other Costs** (Subcontracts)			$
5. **Indirect Costs**** (Indirect Rate 13.3%)			$ 95,716
Total			**$ 1,187,000**

Funds allocated and invoiced under this agreement shall only apply to the WIC local agency program.

*Total of "Salaries & Wages" and 'Fringe Benefits" must equal the total of the "Personnel" line item.

** The Indirect Costs maximum percentage of the "Personnel" line item is shown in the CMB, Chapter, Section 1, Paragraph I.

BUDGET DETAIL
PERSONNEL JUSTIFICATION WORKSHEET
OCTOBER 1, 2013 - SEPTEMBER 30, 2014, YEAR 3

Contractor: El Dorado County Health and Human Services Agency

		Maximum Amount Payable				Authorized Funding Amount			
A Row Number which must be entered on corresponding Duty Statement	B Agency Job Classification or Job Title Only **one** classification can be entered per line.	C Full Time Equivalents (FTE) budgeted for the classification (i.e. 3.5)	D Salary Range for FTEs in the classification	E Total Budgeted for all FTEs in Each Classification	F ADC	G Full Time Equivalents (FTE) budgeted for the classification (i.e. 3.5)	H Salary Range for FTEs in the classification	I Total Budgeted for all FTEs in Each Classification	J ADC
1	Nutrition Services Supervisor	1.000	54,642-72,168	$ 72,168		1.000	54,642-72,168	$ 72,168.00	
2	Nutritionist	1.200	56,337-63,623	$ 63,923		0.600	56,337-63,623	$ 40,574.00	
3	Program Assistant	7.300	41,050-44,966	$ 317,779		7.300	41,050-44,966	$ 317,779.00	
4									
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DO NOT COMPLETE TOTALS IF A CONTINUATION FORM IS USED. PUT TOTALS ON LAST CONTINUATION FORM USED. Continuation form used _____ (Enter "X" if used)	Total Full Time Equivalent Positions	9.500				8.900			
	(1) Total Salaries and Wages Column E or H Total (transfer to funding summary)			$ 453,870.00				$ 430,521.00	
	(2) Total Fringe Benefits (calculate separately) (transfer to funding summary)			$ 267,580.00				$ 254,067.00	
	Total Personnel (1 + 2) (transfer to line item #1 of the funding summary)			$ 721,450.00				$ 684,588.00	

BUDGET DETAIL WORKSHEET
OPERATING EXPENSES
OCTOBER 1, 2011 - SEPTEMBER 30, 2012, YEAR 3

Contractor: El Dorado County Health and Human Services Agency

A	B Category	C Maximum Funding Amount	D Authorized Funding Amount	E A D C	F Description of Change (See instructions in CMB Chapter 3, Section III when completing columns E and F)
REQUIRED CATEGORIES					
1	EQUIPMENT/FURNITURE	$ 85,000	-		
2	POSTAGE	$ 10,000	$ 500		
3	PRINTING/DUPLICATING	$ 25,000	$ 936		
4	SPACE	$ -	$ -		
5	SUPPLIES	$ 15,000	$ 1,050		
6	TRAINING	$ 55,000	-		
7	TRAVEL	$ 35,000	$ 1,000		
8	UTILITIES	$ 15,000	$ 13,792		
ADDITIONAL CATEGORIES					
9	Memberships, Subscriptions, and Professional Certifications	$ 3,444	$ 1,544		
10	Breastfeeding Promotion	$ 124,390	-		
11	Recruitment	$ 2,000	-		
12					
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22					
Funds allocated and invoiced under this agreement shall only apply to the WIC local agency program.					
CATEGORIES TOTAL (Do not enter totals if a continuation page is used) Continuation Page Used ___ (Enter "X" if used)		$ 369,834	$ 18,822		

Exhibit B, Attachment IV
Budget Detail Justifications
Women, Infants and Children (WIC) Nutrition Program
FFYs 2012-2014

Contractor Name: El Dorado County Health and Human Services Agency
Contract Number: 11-10461 **Contracted Service Level:** 3,375 per month
Total Budget, Year 1: $952,000 Year 2: $1,069,000 Year 3: $1,187,000

WIC's SOW requires the local WIC program to provide certification, nutrition education, breastfeeding support, food check issuance and referral services to the contracted number of participants at accessible locations throughout the geographic service area. All budget items must support the delivery of WIC services.

OPERATING EXPENSES

1. Budget Category: Equipment and Furniture
   The budgeted furniture includes the following: cubicles, waiting room, classroom and counseling office tables and chairs for participants; desks for counselors, tables, white boards and other items needed for classrooms, furniture for required lactation rooms and other items needed to meet the SOW. The equipment requested is a planned purchase to replace outdated equipment.

2. Budget Category: Postage
   Local programs mail appointment reminders to participants; federal regulations also allow for food checks to be mailed to participants under defined conditions. The budgeted postage will cover the costs of mailing these items.

3. Budget Category: Printing, Duplicating
   The budgeted printing and duplicating services will ensure required education, certification, outreach and related materials are available in multiple languages as needed to provide to participants.

4. Budget Category: Space
   This local agency does not anticipate any space costs.

5. Budget Category: Supplies
   The SOW requires the local program to maintain supplies and materials for nutrition education and breastfeeding support as well as administrative forms for certification of participants, time accounting and other required activities.

6. Budget Category: Training
   Annual required training includes federal civil rights law, drug, alcohol, smoking and other substance abuse referral, breastfeeding support for all direct service staff, plus any additional training needed to ensure all direct service staff remains updated on WIC requirements, use of the automated system for participant certification, health and nutrition assessment methods, nutrition needs of the target population, education methods and community referral resources.

7. Budget Category: Travel
   The SOW requires the local WIC program to send direct service, training, and/or management staff to 1-2 WIC conferences per year as well as attend other mandatory training sessions, workshops and conferences to maintain nutrition, breastfeeding and education knowledge. In addition, WIC services to families are provided at locations throughout the agency's geographic service area, requiring staff to travel to and from locations for business-related reasons.

8. Budget Category: Utilities
   The WIC SOW requires local agencies to conduct outreach to participants, to certify applicants within 15 days of initial contact, and to maintain access to participants for WIC visits. Equipment needed to meet these requirements includes central telephone systems, Voice-over IP systems, autodialers or autotexting.

9. Budget Category: Membership, Subscriptions and Professional Certifications
   The SOW requires the local program to maintain staffing that includes Registered Dietitians, International Board Certified Lactation consultants and may utilize Certified Health Educators. These professionals are required to maintain their certification, which is an allowable cost in the WIC grant.

10. Budget Category: Breastfeeding Promotion
    The SOW requires the WIC local agency to work to increase and advance the initiation and continuation of breastfeeding among WIC participants. The WIC local agency must spend a minimum of $34.41(subject to annual adjustment) per pregnant and/or breastfeeding participant on these activities.

11. Budget Category: Recruitment
WIC's SOW requires the local program to maintain staffing that includes Registered Dietitians, International Board Certified Lactation consultants and may utilize Certified Health Educators. WIC local agency have determined that paid recruitment services may assist in locating qualified professionals in these disciplines, since they are all "hard-to-fill" classifications.

CAPITAL EXPENDITURES

1. Item: Video Conferencing Equipment
This agency supports network users throughout their service area. The network periodically requires the replacement and upgrades of various network equipment through the term of the agreement to support and maintain the system (both computer and telephone). This includes video conferencing equipment, firewalls/routers, network switches, blade servers, power systems, etc.

GTC 610

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.

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

7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

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

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

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40*)*, marital status, and denial of family care leave. Contractor and subcontractors shall insure 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 §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. 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.

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

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

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

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

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.
a. The Government Code Chapter on Antitrust claims contains the following definitions:
1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

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

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

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

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

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS**:**

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

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

20. LOSS LEADER:

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

Special Terms and Conditions

(For federally funded service contracts or agreements and grant agreements)

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition.

The terms "contract", "Contractor" and "Subcontractor" shall also mean, “agreement”, "grant", “grant agreement”, "Grantee" and "Subgrantee" respectively.

The terms “California Department of Public Health” and “CDPH” shall have the same meaning and refer to the California State agency that is a party to this Agreement.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount, agreement is federally funded, etc.). The provisions herein apply to this Agreement unless the provisions are removed by reference on the face of this Agreement, 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

1. Federal Equal Employment Opportunity Requirements
2. Travel and Per Diem Reimbursement
3. Procurement Rules
4. Equipment Ownership / Inventory / Disposition
5. Subcontract Requirements
6. Income Restrictions
7. Audit and Record Retention
8. Site Inspection
9. Federal Contract Funds
10. Intellectual Property Rights
11. Air or Water Pollution Requirements
12. Prior Approval of Training Seminars, Workshops or Conferences
13. Confidentiality of Information
14. Documents, Publications, and Written Reports
15. Dispute Resolution Process
16. Financial and Compliance Audit Requirements
17. Human Subjects Use Requirements
18. Novation Requirements
19. Debarment and Suspension Certification
20. Smoke-Free Workplace Certification
21. Covenant Against Contingent Fees
22. Payment Withholds
23. Performance Evaluation
24. Officials Not to Benefit
25. Four-Digit Date Compliance
26. Prohibited Use of State Funds for Software
27. Use of Small, Minority Owned and Women's Businesses
28. Alien Ineligibility Certification
29. Union Organizing
30. Contract Uniformity (Fringe Benefit Allowability)
31. Lobbying Restrictions and Disclosure Certification

1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements entered into by the California Department of Public Health (CDPH) formerly known as California Department of Health Services (CDHS).)

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or CDPH, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.

b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.

c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, ‘Amending Executive Order 11246 Relating to Equal Employment Opportunity,‘ and as supplemented by regulation at 41 CFR part 60, “Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, ‘Amending Executive Order 11246 Relating to Equal Employment Opportunity,‘ and as supplemented by regulation at 41 CFR part 60, “Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, ‘Amending Executive Order 11246 Relating to Equal Employment Opportunity,‘ and as supplemented by regulation at 41 CFR part 60, “Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or CDPH may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by CDPH, the Contractor may request in writing to CDPH, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with agreement funds.)

Reimbursement for travel and per diem expenses from CDPH under this Agreement shall, unless otherwise specified in this Agreement, be at the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated in CDPH's Travel Reimbursement Information Exhibit. If the DPA 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. Exceptions to DPA rates may be approved by CDPH upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior authorization from CDPH. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

3. Procurement Rules

(Applicable to all agreements 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 **$5,000 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 $5,000** 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 and/or subcontractor, 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 h of Provision 3. Paragraph c of Provision 3 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 h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment purchases are delegated 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:

[1] Avoid purchasing unnecessary or duplicate items.

[2] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.

[3] 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 of $5,000 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 and/or subcontractor purchase that CDPH determines to be unnecessary in carrying out performance under this Agreement.

f. The Contractor and/or subcontractor 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 and/or subcontractor at any time.

g. For all purchases, the Contractor and/or subcontractor 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 be maintained on file by the Contractor and/or subcontractor for inspection or audit.

h. CDPH may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

4. 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 or federal funds.)

a. Wherever the terms equipment and/or property are used in Provision 4, the definitions in Provision 3, 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.

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 and/or Subcontractor 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 and/or Subcontractor to repair or replace, to CDPH's satisfaction, any damaged, lost or stolen state equipment and/or property. Contractor and/or Subcontractor 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 with agreement funds 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 and/or Subcontractor 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 with agreement funds 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 and/or a subcontractor may only use said vehicles for performance and under the terms of this Agreement.

(3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds 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 with agreement funds or furnished by CDPH under the terms of this Agreement, the Contractor and/or Subcontractor, 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 and/or Subcontractor'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 and/or Subcontractor.

(b) The Contractor and/or Subcontractor 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 and/or Subcontractor agree 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 and/or Subcontractor agree 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 and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:

[1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Public Health (CDPH)).

[2] 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.

[3] 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 and/or Subcontractor 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 and/or Subcontractor 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.

5. Subcontract Requirements

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

a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing $5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services costing $5,000, the Contractor shall obtain at least three bids or justify a sole source award.

(1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.

(2) The State may identify the information needed to fulfill this requirement.

(3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:

(a) A local governmental entity or the federal government,
(b) A State college or university from any State,
(c) A Joint Powers Authority,
(d) An auxiliary organization of a California State University or a California community college,
(e) A foundation organized to support the Board of Governors of the California Community Colleges,
(f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
(g) Entities of any type that will provide subvention aid or direct services to the public,
(h) Entities and/or service types identified as exempt from advertising in State Contracting Manual 5.80. View this publication at the following Internet address:

http://www.ols.dgs.ca.gov/Contract+Manual/Chapters4through6.htm.

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) of $5,000 or more are subject to the prior review and written approval of CDPH. CDPH may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by 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.

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.

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."

i. Unless otherwise stipulated in writing by CDPH, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.

j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, and 31 or other numbered provisions herein that deemed applicable.

6. 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.

7. Audit and Record Retention

(Applicable to agreements in excess of $10,000.)

a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.

b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.

c. Contractor agrees that CDPH, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to

review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).

d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (1) or (2) below.

   (1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

   (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.

f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

g. The Contractor shall, if applicable, comply with the Single Audit Act and the audit reporting requirements set forth in OMB Circular A-133.

8. 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 work.

9. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.

b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.

c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

d. CDPH has the option to invalidate or cancel the Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

10. Intellectual Property Rights

a. Ownership

(1) Except where CDPH has agreed in a signed writing to accept a license, CDPH shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.

(2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.

(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 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.

(2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement, shall include CDPH's notice of copyright, which shall read in 3mm or larger typeface: "© *[Enter Current Year e.g., 2007, etc.]*, Department of Public Health. This material may not be reproduced or disseminated without prior written permission from the 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 the these terms is unattainable, and CDPH determines that the Intellectual Property should be included in or is required for

Contractor's performance of this Agreement, Contractor shall obtain a license under terms acceptable to CDPH.

f. Warranties

(1) Contractor represents and warrants that:

(a) It is free to enter into and fully perform this Agreement.

(b) It has secured and will secure all rights and licenses necessary for its performance of this Agreement.

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

(d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.

(e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.

(f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to CDPH in this Agreement.

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

(h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.

(2) CDPH MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

g. Intellectual Property Indemnity

(1) Contractor shall indemnify, defend and hold harmless CDPH and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDPH's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual

Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. CDPH reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDPH.

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

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

h. Federal Funding

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

i. Survival

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

11. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of $100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

12. 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 held for the staff of the Contractor or Subcontractor to conduct routine business matters.

13. Confidentiality of Information

a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.

b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.

c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDPH Program Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.

d. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than CDPH without prior written authorization from the CDPH Program Contract Manager, except if disclosure is required by State or Federal law.

e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

f. As deemed applicable by CDPH, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

14. 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.

15. Dispute Resolution Process

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 program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.

(2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which

the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.

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

16. Financial and Compliance Audit Requirements

a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.

b. Direct service contract means a contract or agreement for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code section 38020). Direct service contracts shall not include contracts, agreements, grants, or subventions to other governmental agencies or units of government nor contracts or agreements with regional centers or area agencies on aging (H&S Code section 38030).

c. The Contractor, as indicated below, agrees to obtain one of the following audits:

(1) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives **$25,000 or more** from any State agency under a direct service contract or agreement; the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**

(2) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives **less than $25,000** per year from any State agency under a direct service contract or agreement, the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this Agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**

(3) If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends $500,000 or more in Federal awards, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall

be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:

(a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or

(b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.

(4) If the Contractor submits to CDPH a report of an audit other than an OMB A-133 audit, the Contractor must also submit a certification indicating the Contractor has not expended $500,000 or more in federal funds for the year covered by the audit report.

d. Two copies of the audit report shall be delivered to the CDPH program funding this Agreement. The audit report must identify the Contractor's legal name and the number assigned to this Agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the CDPH Program Contract Manager shall forward the audit report to CDPH's Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.

e. The cost of the audits described herein may be included in the funding for this Agreement up to the proportionate amount this Agreement represents of the Contractor's total revenue. The CDPH program funding this Agreement must provide advance written approval of the specific amount allowed for said audit expenses.

f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.

g. Nothing in this Agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.

h. Nothing in this provision limits the authority of the State to make audits of this Agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.

i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.

j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.

k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

17. Human Subjects Use Requirements

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this Agreement, Contractor agrees that if any performance under this Agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

18. Novation Requirements

If the Contractor proposes any novation agreement, CDPH shall act upon the proposal within 60 days after receipt of the written proposal. CDPH may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, CDPH will initiate an amendment to this Agreement to formally implement the approved proposal.

19. Debarment and Suspension Certification

(Applicable to all agreements funded in part or whole with federal funds.)

a. By signing this Agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.

b. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and

(4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

(5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.

(6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the CDPH Program Contract Manager.

d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.

e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the CDPH may terminate this Agreement for cause or default.

20. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.

b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.

c. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.

d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

21. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, CDPH shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

22. Payment Withholds

(Applicable only if a final report is required by this Agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this Agreement, CDPH may, at its discretion, withhold 10 percent (10%) of the face amount of the Agreement, 50 percent (50%) of the final invoice, or $3,000 whichever is greater, until CDPH receives a final report that meets the terms, conditions and/or scope of work requirements of this Agreement.

23. Performance Evaluation

(Not applicable to grant agreements.)

CDPH may, at its discretion, evaluate the performance of the Contractor at the conclusion of this Agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with CDPH. Negative performance evaluations may be considered by CDPH prior to making future contract awards.

24. 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.

25. Four-Digit Date Compliance

(Applicable to agreements in which Information Technology (IT) services are provided to CDPH or if IT equipment is procured.)

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

26. Prohibited Use of State Funds for Software

(Applicable to agreements in which computer software is used in performance of the work.)

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.

27. Use of Small, Minority Owned and Women's Businesses

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

28. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements.)

By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

29. Union Organizing

(Applicable only to grant agreements.)

Grantee, by signing this Agreement, hereby acknowledges the applicability of Government Code Sections 16645 through 16649 to this Agreement. Furthermore, Grantee, by signing this Agreement, hereby certifies that:

a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.

b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.

c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.

d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

30. 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 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 <u>fringe benefits</u> shall be at <u>actual cost</u>.

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 Provision f (3)(a) 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).

(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.

31. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded agreements in excess of $100,000 per Section 1352 of the 31, U.S.C.)

a. Certification and Disclosure Requirements

(1) Each person (or recipient) who requests or receives a contract or agreement, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds $100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.

(2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract, or grant or any extension or amendment of that contract, or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.

(3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:

(a) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;

(b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or

(c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.

(4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract or agreement, subcontract, grant or subgrant exceeding $100,000 at any tier under a contract or agreement, or grant shall file a certification, and a disclosure form, if required, to the next tier above.

(5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to CDPH Program Contract Manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan, or cooperative agreement.

Attachment 1

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, “Disclosure of Lobbying Activities'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of $100,000 or more, and that all subrecipients shall certify and disclose accordingly.

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

El Dorado County	John R. Knight
Name of Contractor	Printed Name of Person Signing for Contractor
11-10461	
Contract / Grant Number	Signature of Person Signing for Contractor
	Chair
Date	Title

After execution by or on behalf of Contractor, please return to:

California Department of Public Health

CDPH reserves the right to notifiy the contractor in writing of an alternate submission address.

Attachment 2

CERTIFICATION REGARDING LOBBYING

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

Approved by OMB
0348-0046

1. Type of Federal Action: [ ] a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: [ ] a. bid/offer/application b. initial award c. post-award	3. Report Type: [ ] a. initial filing b. material change For Material Change Only: Year _____ quarter _____ date of last report _____.
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ___, if known: Congressional District, If known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, If known:	
6. Federal Department/Agency	7. Federal Program Name/Description: CDFA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: $	
10.a. Name and Address of Lobbying Registrant *(If individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from 10a.* *(Last name, First name, MI):*	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. required disclosure shall be subject to a not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: Telephone No.: _____ Date: _____	
Federal Use Only	Authorized for Local Reproduction Standard Form-LLL (Rev. 7-97)	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Exhibit E
Additional Provisions

1. Additional Incorporated Documents

The following documents are not attached, but are incorporated herein and made a part hereof by this reference. These documents may be updated periodically by CDPH, as required by program directives. CDPH shall provide the Contractor with copies of said documents and any periodic updates thereto, electronically or by providing the internet address where they may be found. CDPH will maintain on file, all documents referenced herein and any subsequent updates.

A. The following applicable Federal laws and regulations:

1) WIC Program Federal Statutes and WIC Program Federal Regulations (42 U.S.C section 1786 [http://law2.house.gov/search/criteria.shtml] and Title 7, Code of Federal Regulations (CFR), Part 246) [http://ecfr.gpoaccess.gov], respectively;

2) Farmers' Market Nutrition Program (FMNP) Federal Statutes, and FMNP Federal Regulations Title 17 , 42 U.S.C section 1786(m) [http://law2.house.gov/search/criteria.shtml] and Title 7, CFR, Part 248 [http://ecfr.gpoaccess.gov], respectively;

3) Title 7, Code of Federal Regulations (CFR), Part 3016; Uniform Federal Assistance Regulations, that implements the policies established by Office of Management and Budget (OMB) [http://ecfr.gpoaccess.gov];

4) US Department of Agriculture (USDA), Food and Nutrition Services (FNS) memos and policy documents [http://www.fns.usda.gov/fns]; and

5) Office of Management and Budget (OMB) Circulars, Title 2 of the Code of Federal Regulations (2CRF), Subtitle A, Chapter II, parts 225 and 230. [http://www.whitehouse.gov/omb].

B. The following applicable State laws and regulations:

1) Cooperative Agreement Act, Health and Safety Code (H&S), Section 38070 et seq. [http://www.leginfo.ca.gov/calaw.html];

2) WIC Program State Statutes and WIC Program State Regulations (California Health and Safety Code (H&S) sections 123275 et. Seq. [http://www.leginfo.ca.gov/calaw.html] and Title 22, California Code of Regulations (CCR), Sections 40601 et. Seq. [http://www.leginfo.ca.gov/calaw.html], respectively.

3) FMNP State Statutes (H&S sections123275 et. Seq.) [http://www.leginfo.ca.gov/calaw.html]); and

4) Lactation Accommodation Law; California Labor Code: Division 2, Part 3, Chapter 3.8, Sections 1030-1033 [http://www.leginfo.ca.gov/.html/lab_table_of_contents.html].

Exhibit E
Additional Provisions

C. The following applicable State WIC program administrative rules, policies, and procedures:

1) WIC Program Manual (WPM)
All updates issued as of the effective date of this Agreement, and any subsequent updates. This manual will be updated periodically by the State, as required by program and/or Federal directives [http://www.wicworks.ca.gov/resources/resources_index.htm],;

2) Contract Management Binder (CMB)
All updates issued as of the effective date of this Agreement, and any subsequent updates [http://www.wicworks.ca.gov/resources/resources_index.htm]

3) Any written directive(s) and/or instruction(s) issued by the State WIC Program to the Contractor (e.g., a revision to the WPM via a letter to the Contractor);

4) "The Graphic Standards Manual (GSM) for the California WIC Program," containing information about the rules and formatting for reproducing the WIC logo and tagline [http://www.wicworks.ca.gov/resources/resources_index.htm].

5) This application is required for continuing WIC local agencies, a completed "Funding Application," which includes all exhibits/attachments, [http://www.wicworks.ca.gov/resources/resources_index.htm];

6) This application is required for new WIC local agencies, a Request for Application (RFA), issued to and submitted by the applicant that participated in the RFA process which resulted in this Agreement.

7) A completed WIC local agency Space Schedule containing a listing of rent and space costs detail for WIC sites, submitted by the WIC local agency.

2. Cancellation / Termination

A. This Agreement may be cancelled by the CDPH upon 60 calendar days advance written notice to the Contractor. Notification shall state:

1) Any final performance instruction/requirements,

2) Payment/invoicing instructions/requirements,

3) The effective date of the cancellation/termination,

4) The reasons for the cancellation/termination, and,

5) Except in cases of contract expiration, notification of appeal rights.

B. Upon receipt of a notice of termination or cancellation from the CDPH, Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent Agreement costs.

Exhibit E
Additional Provisions

C. Contractor shall be entitled to payment for all allowable costs authorized under this Agreement, including authorized non-cancelable obligations incurred up to the date of cancellation/termination, provided such expenses do not exceed the stated authorized amounts payable and provided that the Contractor submits an accurate and complete "Report of Actual Expenditures" and the final invoice no later than seventy-five (75) days following the effective date of the cancellation/termination.

D. The Contractor agrees to the following responsibilities upon cancellation/termination or non-renewal by either party, or as otherwise directed by the State. The Contractor shall:

1) Cooperate in all efforts to refer WIC participants to other WIC local agencies in order to maintain continuity of participation in the WIC Program;

2) As of the date of cancellation/termination or nonrenewal, place no further orders or subcontracts for equipment, minor-equipment, supplies, and services;

3) Satisfy all outstanding liabilities and all claims arising out of termination of any orders and subcontracts arising from this Agreement;

4) Upon payment by the State of all items properly chargeable to the State hereunder, less any amount deducted to satisfy claims, liabilities, contractual overpayments or audit findings, the Contractor shall transfer, assign and make available to the State all funds, property and materials belonging to the State. No extra compensation is to be paid to the Contractor for its services in connection with any such transfer of equipment; and

5) Take the necessary steps or actions, and except as otherwise directed by the State, to protect and preserve any property related to this Agreement which is in the possession of the Contractor.

3. Avoidance of Conflicts of Interest by Contractor

A. The State WIC Program intends to avoid any real or apparent conflict of interest on the part of the Contractor, subcontractors, or employees, officers and directors of the Contractor or subcontractors. Thus, State WIC Program reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to the State WIC Program review and prior approval. The State WIC Program's policies for the Contractor is defined in the WPM 150-10.

B. Conflicts of interest include, but are not limited to:

1) An instance where the Contractor or any of its subcontractors, or any employee, officer, or director of the Contractor or any subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the Agreement.

Exhibit E
Additional Provisions

2) An instance where the Contractor's or any subcontractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.

C. If CDPH is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by CDPH to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by CDPH and cannot be resolved to the satisfaction of CDPH, the conflict will be grounds for terminating the contract. CDPH may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.

D. Any costs (including legal costs) incurred as a result of a conflict of interest determined by the court or by the State shall be the responsibility of the Contractor.

4. Insurance Requirements

Contractor shall comply with the following insurance requirements:

A. Commercial General Liability

The Contractor must furnish to the State WIC Program a certificate of insurance stating that commercial general liability insurance of not less than one million ($1,000,000) per occurrence for bodily injury and property damage liability combined is presently in effect for the Contractor. The commercial general liability insurance 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. The commercial general liability insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability.

B. The certificate of insurance must be issued by an insurance company acceptable to the Department of General Services (DGS) Office of Risk and Insurance Management or be provided through partial or total self-insurance acceptable to DGS.

C. The certificate of insurance must include the following provisions:

1) The insurer will not cancel the insured's coverage without giving thirty (30) days prior written notice to the State WIC Program, and

2) 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 of California under this Agreement.

Exhibit E
Additional Provisions

D. The Contractor agrees that the insurance required herein will remain in effect at all times during the term of the Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, the Contractor agrees to provide, at least thirty (30) calendar days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement or for a period of not less than one year. State WIC Program may, in addition to any other remedies it may have, terminate this Agreement on the occurrence of such event. New certificates of insurance are subject to the approval of DGS, and the Contractor agrees that no work or services shall be performed prior to such approval.

E. The State will not be responsible for any premiums, deductibles, or assessments on the insurance policy.

5. Freeze Exemptions

The Contractor shall support the full use of federal funds and agrees that any of the following limitations adopted by the Contractor or its agents shall not apply to this Agreement:

A. Any hiring freeze adopted during the term of this Agreement shall not be applied to the positions funded in whole by this Agreement.

B. Not to implement any personnel policy including employee furloughs, which may adversely affect performance or the positions funded in whole by this Agreement.

C. Any travel freeze or travel limitation policy adopted during the term of this Agreement shall not restrict travel funded in whole by this Agreement.

D. Any purchasing freeze or purchase limitation policy adopted during the term of this Agreement shall not restrict or limit purchases funded in whole by this Agreement.

6. Order of Precedence

If there are inconsistencies between the terms of this Agreement and the attachments hereto, such inconsistencies shall be resolved by giving precedence to the provisions in documents in the following order:

A. Standard Agreement (STD. 213);

B. Exhibit A – Scope of Work;

C. Exhibit B – Budget Detail and Payment Provisions;

D. Exhibit B, Attachment I, II and III;

E. Exhibit C – General Terms and Conditions

F. Exhibit D(F) – Special Terms and Conditions;

Exhibit E
Additional Provisions

G. Exhibit E – Additional Provisions;

H. The WPM, any updates issued as of the effective date of this Agreement and any subsequent updates; and

I. The CMB, any updates issued as of the effective date of this Agreement, and any subsequent updates.

J. WIC Supplemental Nutrition Program "Funding Application" or "Request for Application" as described in Provision 1, Section C, Paragraphs 5 and 6 of this exhibit.

7. Probation

Probation is a trial period to ensure that the Contractor has the ability to meet the requirements necessary to operate the WIC Program as described in this Agreement. The requirements are provided in the CMB Chapter 2, Section I, Paragraph G.

8. Civil Rights

A. Contractor hereby agrees that all participants shall be served equally, and shall not be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under the WIC Program on the basis of the categories of race, color, national origin, sex, age, and/or disability as listed in WPM 510-10.

B. Contractor shall take measures necessary to comply with the following laws, regulations and directives in accordance with WPM 510-10: Title VI of the Civil Rights Act of 1964, Title IV of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, and California Fair Employment and Housing Act.

C. Contractor shall notify participants that persons with disabilities who require alternative means for communication of program information (Braille, large print, audio tape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD), or the California Department of Public Health at 1-800-735-2929 (TDD only), or 1-800-735-2922 (a voice relay service that permits a TDD user to contact an operator who connects the caller with another TDD user).

D. To file a complaint of discrimination, Contractor may write to USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C., 20250-9410 or call (202) 720-5964 (voice and TDD).

E. By giving this assurance, Contractor agrees to compile data, maintain records, and submit reports, as required, to permit effective enforcement of the nondiscrimination laws, and to permit authorized FNS personnel, during normal working hours, to review such records, books and accounts as needed to ascertain compliance with the nondiscrimination laws.

Exhibit E
Additional Provisions

F. If there are any violations of this assurance, FNS shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Contractor, her/his successors, transferees, and assignees, as long as they receive assistance or retain possession of any financial assistance from the State for the WIC Program. The person or persons whose signatures appear on the face of this Agreement are authorized to sign this assurance on behalf of the Contractor.

Exhibit F

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** 11-10461 entered into between the State of 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 TO THE FINAL INVOICE

Contractor's Legal Name (as on contract): El Dorado County Health and Human Services Agency

Signature of Contractor or Official Designee: _____ Date: _____

Printed Name/Title of Person Signing: _____

CDPH Distribution: Accounting (Original) Program

Exhibit G

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

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

I. Order of Precedence: With respect to information privacy and security requirements for all CDPH PCI, the terms and conditions of this Exhibit shall take precedence over any conflicting terms or conditions set forth in any other part of the agreement between Contractor and CDPH, including Exhibit A (Scope of Work), all other exhibits and any other attachments, and shall prevail over any such conflicting terms or conditions.

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

III. Definitions: For purposes of the agreement between Contractor and CDPH, including this Exhibit, the following definitions shall apply:

A. Breach: "Breach" means:
   1. the unauthorized acquisition, access, use, or disclosure of CDPH PCI in a manner which compromises the security, confidentiality or integrity of the information; or
   2. the same as the definition of "breach of the security of the system" set forth in California Civil Code section 1798.29(d).

B. Confidential Information: "Confidential information" means information that:

   1. does not meet the definition of "public records" set forth in California Government Code section 6252(e), or is exempt from disclosure under any of the provisions of Section 6250, et seq. of he California Government Code or any other applicable state or federal laws; or
   2. is contained in documents, files, folders, books or records that are clearly labeled, marked or designated with the word "confidential" by CDPH; or
   3. is "personal information" as defined in this Exhibit.

C. Disclosure: "Disclosure" means the release, transfer, provision of, access to, or divulging in any other manner of information.

D. Personal Information: "Personal information" means information, in any medium (paper, electronic, oral) that:

   1. by itself directly identifies or uniquely describes an individual; or

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

2. creates a substantial risk that it could be used in combination with other information to indirectly identify or uniquely describe an individual, or link an individual to the other information; or
3. meets the definition of "personal information" set forth in California Civil Code section 1798.3(a) or
4. is one of the data elements set forth in California Civil Code section 1798.29(e)(1),(2) or (3); or
5. meets the definition of "medical information" set forth in either California Civil Code section 1798.29(f)(2) or California Civil Code section 56.05(g); or
6. meets the definition of "health insurance information" set forth in California Civil Code section 1798.29(f)(3); and
7. Is protected from disclosure under applicable state or federal law.

E. Security Incident: "Security Incident" means:

1. an attempted breach; or
2. the attempted or successful modification or destruction of CDPH PCI, in violation of any state or federal law or in a manner not permitted under the agreement between Contractor and CDPH, including this Exhibit; or
3. the attempted or successful modification or destruction of, or interference with, Contractor's system operations in an information technology system, that negatively impacts the confidentiality, availability or integrity of CDPH PCI.

F. Use: "Use" means the sharing, employment, application, utilization, examination, or analysis of information.

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

V. Use Restrictions: The Contractor and its employees, agents, or subcontractors shall not use any CDPH PCI for any purpose other than carrying out the Contractor's obligations under its agreement with CDPH.

VI. Safeguards: The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the privacy, confidentiality, security, integrity, and availability of CDPH PCI, including electronic or computerized CDPH PCI. At each location where CDPH PCI is located, the Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities in performing its agreement with CDPH, including this Exhibit, and which incorporates the requirements of Section VII, Security, below. Contractor shall provide CDPH with Contractor's current and updated policies.

VII. Security: The Contractor shall take any and all steps reasonably necessary to ensure the continuous security of all computerized data systems containing CDPH PCI. These steps shall include, at a minimum, complying with all of the data system security precautions listed in the Contractor Data Security Standards set forth in Attachment 1 to this Exhibit.

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VIII. Security Officer: At each location where CDPH PCI is located, the Contractor shall designate a Security Officer to oversee its compliance with this Exhibit and for communicating with CDPH on matters concerning this Exhibit.

IX. Training: The Contractor shall provide training on its obligations under this Exhibit, at its own expense, to all of its employees who assist in the performance of Contractor's obligations under Contractor's agreement with CDPH, including this Exhibit, or otherwise use or disclose CDPH PCI.

A. The Contractor shall require each employee who receives training to certify, either in hard copy or electronic form, the date on which the training was completed.
B. The Contractor shall retain each employee's certifications for CDPH inspection for a period of three years following contract termination.

X. Employee Discipline: Contractor shall impose discipline that it deems appropriate (in its sole discretion) on such employees and other Contractor workforce members under Contractor's direct control who intentionally violate any provisions of this Exhibit.

XI. Breach and Security Incident Responsibilities:

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

Contractor shall take:

1. prompt corrective action to mitigate any risks or damages involved with the breach or security incident and to protect the operating environment; and
2. any action pertaining to a breach required by applicable federal and state laws, including, specifically, California Civil Code section 1798.29.

B. Investigation of Breach: The Contractor shall immediately investigate such breach or security incident. As soon as the information is known and subject to the legitimate needs of law enforcement, Contractor shall inform the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer of:

1. what data elements were involved and the extent of the data involved in the breach, including, specifically, the number of individuals whose personal information was breached; and

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2. a description of the unauthorized persons known or reasonably believed to have improperly used the CDPH PCI and/or a description of the unauthorized persons known or reasonably believed to have improperly accessed or acquired the CDPH PCI, or to whom it is known or reasonably believe have had the CDPH PCI improperly disclosed to them; and
3. a description of where the CDPH PCI is believed to have been improperly used or disclosed; and
4. a description of the probable causes of the breach or security incident; and
5. whether Civil Code sections 1798.29 or any other federal or state laws requiring individual notifications of breaches have been triggered.

C. Written Report: The Contractor shall provide a written report of the investigation to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer as soon as practicable after the discovery of the breach or security incident. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the breach or security incident, and measures to be taken to prevent the recurrence of such breach or security incident.

D. Notification to Individuals: If notification to individuals whose information was breached is required under state or federal law, and regardless of whether Contractor is considered only a custodian and/or non-owner of the CDPH PCI, Contractor shall, at its sole expense, and at the sole election of CDPH, either:

1. make notification to the individuals affected by the breach (including substitute notification), pursuant to the content and timeliness provisions of such applicable state or federal breach notice laws. Contractor shall inform the CDPH Privacy Officer of the time, manner and content of any such notifications, prior to the transmission of such notifications to the individuals; or
2. cooperate with and assist CDPH in its notification (including substitute notification) to the individuals affected by the breach.

E. CDPH Contact Information: To direct communications to the above referenced CDPH staff, the Contractor shall initiate contact as indicated herein. CDPH reserves the right to make changes to the contact information below by written notice to the Contractor. Said changes shall not require an amendment to this Exhibit or the agreement to which it is incorporated.

CDPH Program Contract Manager	**CDPH Privacy Officer**	**CDPH Chief Information Security Officer (and CDPH IT Service Desk)**
See the Scope of Work exhibit for Program Contract Manager	Privacy Officer Privacy Office, c/o Office of Legal Services California Department of Public Health P.O. Box 997377, MS 0506 Sacramento, CA 95899-7377	Chief Information Security Officer Information Security Office California Department of Public Health P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413

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	Email: privacy@cdph.ca.gov Telephone: (877) 421-9634	Email: cdphiso@cdph.ca.gov Telephone: IT Service Desk (916) 440-7000 or (800) 579-0874

XII. Documentation of Disclosures for Requests for Accounting: Contractor shall document and make available to CDPH or (at the direction of CDPH) to an Individual such disclosures of CDPH PCI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of personal information as required by applicable state or federal law.

XIII. Requests for CDPH PCI by Third Parties: The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDPH Program Contract Manager all requests for disclosure of any CDPH PCI emanating from third parties to the agreement between Contractor and CDPH (and not emanating from an Individual for an accounting of disclosures of personal information pursuant to applicable state or federal law), unless prohibited from doing so by applicable state or federal law.

XIV. Audits, Inspection and Enforcement: From time to time, CDPH may inspect the facilities, systems, books and records of Contractor to monitor compliance with this Exhibit. Contractor shall promptly remedy any violation of any provision of this Exhibit and shall certify the same to the CDPH Program Contract Manager in writing.

XV. Return or Destruction of CDPH PCI on Expiration or Termination: On expiration or termination of the agreement between Contractor and CDPH for any reason, Contractor shall return or destroy the CDPH PCI. If return or destruction is not feasible, Contractor shall explain to CDPH why, in writing, to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer, using the contact information listed in Section XI(c), above.

A. Retention Required by Law: If required by state or federal law, Contractor may retain, after expiration or termination, CDPH PCI for the time specified as necessary to comply with the law.

B. Obligations Continue Until Return or Destruction: Contractor's obligations under this Exhibit shall continue until Contractor returns or destroys the CDPH PCI or returns the CDPH PCI to CDPH; provided however, that on expiration or termination of the agreement between Contractor and CDPH, Contractor shall not further use or disclose the CDPH PCI except as Required by state or federal law.

C. Notification of Election to Destroy CDPH PCI: If Contractor elects to destroy the CDPH PCI, Contractor shall certify in writing, to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer, using the contact information listed in Section XI(c), above, that the CDPH PCI has been destroyed.

XVI. Amendment: The parties acknowledge that Federal and State laws relating to information security and privacy are rapidly evolving and that amendment of this Exhibit may be required to provide for procedures to ensure compliance with such laws. The parties specifically agree to take such action as is necessary to implement new standards and requirements imposed by regulations and other applicable laws relating to the security or privacy of CDPH PCI. The parties agree to promptly enter into negotiations concerning an amendment to this Exhibit consistent with new standards and requirements imposed by applicable laws and regulations.

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XVII. Assistance in Litigation or Administrative Proceedings: Contractor shall make itself and any subcontractors, employees or agents assisting Contractor in the performance of its obligations under the agreement between Contractor and CDPH, available to CDPH at no cost to CDPH to testify as witnesses, in the event of litigation or administrative proceedings being commenced against CDPH, its director, officers or employees based upon claimed violation of laws relating to security and privacy, which involves inactions or actions by the Contractor, except where Contractor or its subcontractor, employee or agent is a named adverse party.

XVIII. No Third-Party Beneficiaries: Nothing express or implied in the terms and conditions of this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than CDPH or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

XIX. Interpretation: The terms and conditions in this Exhibit shall be interpreted as broadly as necessary to implement and comply with regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of this Exhibit shall be resolved in favor of a meaning that complies and is consistent with Federal and State laws and regulations.

XX. Survival: If Contractor does not return or destroy the CDPH PCI upon the expiration or termination of the Agreement, the respective rights and obligations of Contractor under Sections VI, VII and XI of this Exhibit shall survive the termination or expiration of the agreement between Contractor and CDPH.

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Attachment 1
Contractor Data Security Standards

1. General Security Controls

A. ***Confidentiality Statement.*** All persons that will be working with CDPH PCI must sign a confidentiality statement. The statement must include at a minimum, General Use, Security and Privacy safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to CDPH PCI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for CDPH inspection for a period of three (3) years following contract termination.

B. ***Background check.*** Before a member of the Contractor's workforce may access CDPH PCI, Contractor must conduct a thorough background check of that worker and evaluate the results to assure that there is no indication that the worker may present a risk for theft of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

C. ***Workstation/Laptop encryption.*** All workstations and laptops that process and/or store CDPH PCI must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. The encryption solution must be full disk unless approved by the CDPH Information Security Office.

D. ***Server Security.*** Servers containing unencrypted CDPH PCI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.

E. ***Minimum Necessary.*** Only the minimum necessary amount of CDPH PCI required to perform necessary business functions may be copied, downloaded, or exported.

F. ***Removable media devices.*** All electronic files that contain CDPH PCI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher

G. ***Antivirus software.*** All workstations, laptops and other systems that process and/or store CDPH PCI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.

H. ***Patch Management.*** All workstations, laptops and other systems that process and/or store CDPH PCI must have security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.

I. ***User IDs and Password Controls.*** All users must be issued a unique user name for accessing CDPH PCI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Must be at least eight characters. Must be a non-dictionary word. Must not be stored in

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readable format on the computer. Must be changed every 60 days. Must be changed if revealed or compromised. Must be composed of characters from at least three of the following four groups from the standard keyboard:

- Upper case letters (A-Z)
- Lower case letters (a-z)
- Arabic numerals (0-9)
- Non-alphanumeric characters (punctuation symbols)

J. ***Data Sanitization.*** All CDPH PCI must be sanitized using NIST Special Publication 800-88 standard methods for data sanitization when the CDPH PSCI is no longer needed.

2. System Security Controls

A. ***System Timeout.*** The system must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.

B. ***Warning Banners.*** All systems containing CDPH PCI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only. User must be directed to log off the system if they do not agree with these requirements.

C. ***System Logging*****.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for CDPH PCI, or which alters CDPH PCI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If CDPH PCI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.

D. ***Access Controls.*** The system must use role based access controls for all user authentications, enforcing the principle of least privilege.

E. ***Transmission encryption.*** All data transmissions of CDPH PCI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. Encryption can be end to end at the network level, or the data files containing CDPH PCI can be encrypted. This requirement pertains to any type of CDPH PCI in motion such as website access, file transfer, and E-Mail.

F. ***Intrusion Detection***. All systems involved in accessing, holding, transporting, and protecting CDPH PCI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3. Audit Controls

A. ***System Security Review.*** All systems processing and/or storing CDPH PCI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews shall include vulnerability scanning tools.

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B. ***Log Reviews.*** All systems processing and/or storing CDPH PCI must have a routine procedure in place to review system logs for unauthorized access.

C. ***Change Control.*** All systems processing and/or storing CDPH PCI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4. Business Continuity / Disaster Recovery Controls

A. ***Disaster Recovery.*** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic CDPH PCI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this agreement for more than 24 hours.

B. ***Data Backup Plan.*** Contractor must have established documented procedures to backup CDPH PCI to maintain retrievable exact copies of CDPH PCI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and the amount of time to restore CDPH PCI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of CDPH data.

5. Paper Document Controls

A. ***Supervision of Data.*** CDPH PCI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. CDPH PCI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.

B. ***Escorting Visitors.*** Visitors to areas where CDPH PCI is contained shall be escorted and CDPH PHI shall be kept out of sight while visitors are in the area.

C. ***Confidential Destruction.*** CDPH PCI must be disposed of through confidential means, using NIST Special Publication 800-88 standard methods for data sanitization when the CDPH PSCI is no longer needed.

D. ***Removal of Data.*** CDPH PCI must not be removed from the premises of the Contractor except with express written permission of CDPH.

E. ***Faxing.*** Faxes containing CDPH PCI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending.

F. ***Mailing.*** CDPH PCI shall only be mailed using secure methods. Large volume mailings of CDPH PHI shall be by a secure, bonded courier with signature required on receipt. Disks and other transportable media sent through the mail must be encrypted with a CDPH approved solution, such as a solution using a vendor product specified on the CSSI.

G.