COUNTY OF LOS ANGELES
Public Health

JONATHAN E. FIELDING, M.D., M.P.H.
Director and Health Officer

JONATHAN E. FREEDMAN
Chief Deputy Director

313 North Figueroa Street, Room 806
Los Angeles, California 90012
TEL (213) 240-8117 • FAX (213) 975-1273

www.publichealth.lacounty.gov

BOARD OF SUPERVISORS

Gloria Molina
First District

Mark Ridley-Thomas
Second District

Zev Yaroslavsky
Third District

Don Knabe
Fourth District

Michael D. Antonovich
Fifth District

February 17, 2009

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA. 90012

Dear Supervisors:

APPROVAL OF A STANDARD AGREEMENT FROM THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH FOR THE PUBLIC HEALTH LABORATORY VIRAL LOAD TESTING PROGRAM, A BOARD RESOLUTION AND AN APPROPRIATION ADJUSTMENT (ALL SUPERVISORIAL DISTRICTS) (4 VOTES)

SUBJECT

Request approval to accept a Standard Agreement from the California Department of Public Health for the period of July 1, 2008 through June 30, 2011 to support the Public Health Laboratory Viral Load Testing Program.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and instruct the Director of the Department of Public Health (DPH), or his designee, to accept and execute Standard Agreement Number 08-85400 (Exhibit I), with the California Department of Public Health (CDPH) in an amount not to exceed $9,000,000 for three one-year periods, effective July 1, 2008 through June 30, 2011, to support DPH's Public Health Laboratory (PHL) Viral Load Testing (VLT) Program, at no net County cost.

2. Adopt the Board Resolution (Exhibit II), as required by CDPH to accept Standard Agreement Number 08-85400 to support the PHL VLT Program.

3. Delegate authority to the Director of DPH, or his designee, to execute amendments and/or supplements to Standard Agreement Number 08-85400 that permit the rollover of unspent funds and/or increase or decrease funding up to 25 percent of each fiscal year's total award for the period of July 1, 2008 through June 30, 2011, subject to review and approval by County Counsel and the Chief Executive Office, and notification of the Board offices.

4. Authorize DPH to fill seven new Full-Time Equivalent (FTE) positions, consisting of one Clinical Microbiologist II, two Public Health Microbiologist I, one Senior Laboratory Assistant, and three Laboratory Assistants, in excess of what is provided for in DPH's staffing ordinance, pursuant to Section 6.06.020 of the County Code, and subject to allocation. These positions are 100 percent offset by CDPH grant funds.

5. Approve the Request for Appropriation Adjustment (Attachment A) in the amount of $559,000 for Fiscal Year (FY) 2008-2009. This Appropriation Adjustment will increase DPH's budgeted Services and Supplies (S&S) appropriation by $514,000 and Salaries and Employee Benefits (S&EB) appropriation by $45,000, and is fully offset by CDPH Standard Agreement Number 08-85400.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Board approval of this action accepts grant funds for the VLT program, including an increase of $2,325,000 over the previous grant award, and allows for additional testing services to be performed by DPH's PHL to accommodate an anticipated increase in the volume of specimens for viral load testing for FY 2008-2009 through FY 2010-2011. Additional testing supports the continuing demand for viral load testing services from community-based clinics and local hospitals. The workload has increased from 29,750 viral load tests during FY 2007-2008 to approximately 30,000 viral load tests during FY 2008-2009, and is expected to continue increasing by 30,000 for each of the two subsequent fiscal years. VLT detects and quantifies the amount of HIV-1 in an infected individual. HIV-1 is the subtype B infection that VLT measures and is the predominant type in the United States and worldwide.

The seven positions requested will support the increase in workload, and the additional grant funding will enable the PHL VLT Program to expand existing services provided in the regional public health laboratories and local CDPH HIV Therapeutic Monitoring Program (TMP). TMP performs VLT on blood specimens drawn from program-eligible HIV-1 infected individuals for analysis and measurement of the presence of HIV in the blood. The PHL VLT Program assists the TMP with the monitoring of HIV-1 disease

status as a guideline for recommendations for therapy, and in predicting the future course of HIV among Los Angeles County's HIV infected population.

The additional S&S appropriation of $514,000, under the attached Appropriation Adjustment, will be used for projected operating expenses for FY 2008-2009, including laboratory equipment, medical reference lab services, and reagents and supplies for VLT. The S&EB appropriation of $45,000 will fund personnel expenses associated with the PHL VLT Program's increased workload. This S&EB appropriation will provide funding for the remaining three month period of FY 2008-2009 for which additional appropriation is required.

Implementation of Strategic Plan Goals

This action supports Goal 6, Community Services and Goal 7, Health and Mental Health of the County's Strategic Plan, by allowing the continuation of VLT services for residents of Los Angeles County infected with HIV-1.

FISCAL IMPACT/FINANCING

The total amount of funding available to DPH for the PHL VLT Program under Standard Agreement Number 08-85400 is $9,000,000, comprised of $3,000,000 per fiscal year for FYs 2008 through 2011, at no net County cost.

Of the $3,000,000 award for FY 2008-2009, $2,027,489 will be used for operating expenses which include laboratory equipment and supplies for VLT and $972,511 will fund personnel expenses related to the PHL VLT Program.

The attached Request for Appropriation Adjustment (Attachment A), in the amount of $559,000 will increase DPH's FY 2008-2009 S&S and S&EB appropriations, fully offset by grant funding from CDPH to support the PHL VLT Program's increase in workload. Funding for future fiscal years will be requested, as necessary.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On August 16, 2005 your Board approved the acceptance of Standard Agreement Amendment 05-45211 from the California Department of Health Services (CDHS) in the amount of $5,100,000 for three one-year periods, effective July 1, 2005 through June 30, 2008; 100 percent offset by CDHS grant funding.

On July 9, 2007, DPH exercised its delegated authority previously approved by your Board to accept and sign Standard Agreement Amendment Number 05-45211, A01,

which increased funding for the PHL VLT Program in the amount of $300,000, from $5,100,000 to $5,400,000.

On April 8, 2008, your Board approved acceptance of Standard Agreement Amendment Number 05-45211, A02 from the California Department of Health Services (CDHS) in the amount of $6,675,000, which provided an increase of $1,275,000 in grant funds, effective July 1, 2005 through June 30, 2008.

On October 30, 2008, DPH's PHL received a new Standard Agreement Number 08-85400 from CDPH in the amount of $9,000,000 for three one-year periods, effective July 1, 2008 though June 30, 2011, at no net County cost.

Exhibits I and II have been approved as to form by County Counsel.

Attachment A is the Appropriation Adjustment. Attachment B is the Grant Management Statement.

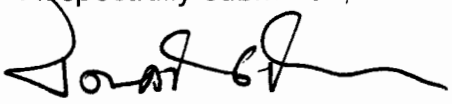
IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of the recommended action will ensure continued funding for DPH's PHL, and will allow for the continuation of vital testing and services for HIV-1 infected persons in Los Angeles County.

CONCLUSION

The Department of Public Health requires four signed copies of your Board's action.

Respectfully submitted,



Jonathan E. Fielding, M.D., M.P.H.
For Director and Health Officer

JEF:yl
Attachments (4)

c: Chief Executive Office
County Counsel

76R 352M 11/83

Attachment A

BOARD OF SUPERVISORS OFFICIAL COPY

COUNTY OF LOS ANGELES

DEPT'S. NO. 295

REQUEST FOR APPROPRIATION ADJUSTMENT

January 14, 2009

DEPARTMENT OF PUBLIC HEALTH

AUDITOR-CONTROLLER.

THE FOLLOWING APPROPRIATION ADJUSTMENT IS DEEMED NECESSARY BY THIS DEPARTMENT. WILL YOU PLEASE REPORT AS TO ACCOUNTING AND AVAILABLE BALANCES AND FORWARD TO THE CHIEF ADMINISTRATIVE OFFICER FOR HIS RECOMMENDATION OR ACTION.

ADJUSTMENT REQUESTED AND REASONS THEREFOR
FISCAL YEAR 2008/09
4-VOTE

SOURCES:		USES:	
Public Health Services A01 - PH - 88 - 8831 - 23450 State Other Increase Revenue	$ 559,000	Public Health Services A01 - PH - 1000 - 23450 Salaries & Employee Benefits Increase Appropriation	$ 45,000
		Public Health Services A01 - PH - 2000 - 23450 Services & Supplies Increase Appropriation	514,000
Total	$ 559,000	Total	$ 559,000

JUSTIFICATION

To request increases in the Salaries & Employee Benefits and Services & Supplies appropriations to support Public Health Laboratory Viral Load Testing program for Fiscal Year 2008/09. Funding is provided by the California Department of Public Health for Fiscal Year 2008/09. There is no impact on Net County cost.

Nanette Herrera

Nanette Herrera, Chief
Dept of Public Health-Controller's Division

CHIEF ADMINISTRATIVE OFFICER'S REPORT

REFERRED TO THE CHIEF ADMINISTRATIVE OFFICER FOR — ACTION

✓ RECOMMENDATION

AUDITOR-CONTROLLER — BY Karen Shikuma

NO. 119 — Jan 16 20 09

APPROVED AS REQUESTED — February 4 2009

AS REVISED

CHIEF ADMINISTRATIVE OFFICER

APPROVED (AS REVISED): BOARD OF SUPERVISORS — 20

BY

DEPUTY COUNTY CLERK

Attachment B

Los Angeles County Chief Executive Office
Grant Management Statement for Grants Exceeding $100,000

Department: Public Health Laboratory

Grant Project Title and Description
APPROVAL OF A STANDARD AGREEMENT FROM THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH FOR THE PUBLIC HEALTH LABORATORY VIRAL LOAD TESTING PROGRAM, A BOARD RESOLUTION AND AN APPROPRIATION ADJUSTMENT

Funding Agency	Program (Fed. Grant #State Bill or Code #)	Grant Acceptance Deadline
California Department of Public Health	Standard Agreement Number 08-85400	N/A

Total Amount of Grant Funding: $9,000,000 County Match Requirements:

Grant Period: 07/01/08-06/30/11 Begin Date: 07/01/08 End Date: 06/30/11

Number of Personnel Hired Under this Grant: Full Time 7 Part Time 0

Obligations Imposed on the County When the Grant Expires

Will all personnel hired for this program be informed this is a grant funded program? Yes ☒ No ☐

Will all personnel hired for this program be placed on temporary "N" items? Yes ☒ No ☐

Is the County obligated to continue this program after the grant expires Yes ☐ No ☒

If the County is not obligated to continue this program after the grant expires, the Department will:

a). Absorb the program cost without reducing other services Yes ☐ No ☒

b). Identify other revenue sources Yes ☐ No ☒

(Describe)

c). Eliminate or reduce, as appropriate, positions/program costs funded by this grant Yes ☒ No ☐

Impact of additional personnel on existing space: None

Other requirements not mentioned above: None

Department Head Signature _____ Date 1.9.09

STATE OF CALIFORNIA

STANDARD AGREEMENT

STD 213 (CDPH Rev 7/08)

EXHIBIT I

REGISTRATION NUMBER	AGREEMENT NUMBER
	08-85400

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)

County of Los Angeles

2. The term of this Agreement is: July 1, 2008 through June 30, 2011

3. The maximum amount of this Agreement is: $ 9,000,000 Nine Million 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	4 pages
Exhibit B – Budget Detail and Payment Provisions	4 pages
Exhibit B, Attachment I – Invoice Format	1 page
Exhibit B, Attachment II – HIV-1 Viral Load Test Voucher (Sample)	1 page
Exhibit C * – General Terms and Conditions	GTC 307
Exhibit D (S) – Special Terms and Conditions (Attached hereto as part of this agreement)	18 pages
Exhibit E – Additional Provisions	2 pages
Exhibit F – Contractor's Release	1 page
Exhibit G – HIPAA Business Associate Addendum	7 pages
Exhibit H – SR 1 CDPH- ISO Project Requirements	15 pages

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		California Department of General Services Use Only
CONTRACTOR'S NAME *(if other than an individual, state whether a corporation, partnership, etc.)* County of Los Angeles		
BY *(Authorized Signature)*	DATE SIGNED *(Do not type)*	
PRINTED NAME AND TITLE OF PERSON SIGNING Dr. Jonathan Fielding, MD. MPH, Director of Public Health		
ADDRESS c/o Sue Sabet, Ph.D. Laboratory Director, Los Angeles County Public Health Laboratory, 12750 Erickson Avenue, Downey, CA 90242		
STATE OF CALIFORNIA		
AGENCY NAME California Department of Public Health		
BY *(Authorized Signature)*	DATE SIGNED *(Do not type)*	
PRINTED NAME AND TITLE OF PERSON SIGNING Margie Sunahara, Chief, Contract Management Unit		[X] Exempt per: OOA Transaction is PCC exempt per applicable Budget Act.
ADDRESS 1501 Capitol Avenue, Suite 71.5178, MS 1802, PO Box 997377 Sacramento, CA 95899-7377		

Exhibit A
Scope of Work

1. Service Overview

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

Under the Department's HIV Therapeutic Monitoring Program (TMP), the Contractor shall process and analyze Viral Load Test specimens (VLTs) to determine the quantity of HIV –1 (RNA copies/ml) in the blood of TMP-eligible individuals in the following three client categories:

(1) Early Intervention Program (EIP) clients in State Office of AIDS (OA)-funded EIP sites;
(2) Non-EIP clients in non-Part A (former Title I) areas;
(3) Non-EIP clients in Part A (former Title I) areas

2. Service Location

The services shall be performed at OA-funded EIP sites and/or Local Health Jurisdiction sites including, but not limited to, the Counties of Los Angeles and Pasadena.

3. Service Hours

The services shall be provided during counties' working hours and days excluding counties' and national holidays.

4. Project Representatives

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

California Department of Public Health	**County of Los Angeles**
Toni Post Therapeutic Monitoring Program Contract Monitor Telephone: (916) 449-5970 Fax: (916) 449-5959 E-mail: Toni.Post@cdph.ca.gov	Los Angeles County Public Health Laboratory Sue Sabet, Ph. D. Laboratory Director Phone: (562) 658-1333 Fax: (562) 401-5994 E-mail: ssabet@ph.lacounty.gov

Exhibit A
Scope of Work

B. Direct all inquiries to:

California Department of Public Health	**County of Los Angeles**
Office of AIDS Therapeutic Monitoring Program Attention: Toni M. Post Mail Station Code 7700 P.O. Box Number 997426 Sacramento, CA 95899-7426	Sue Sabet, Ph. D. Laboratory Director Los Angeles County Public Health Laboratory 12750 Erickson Avenue Downey, CA 90242
Telephone: (916) 449-5900 Fax: (916) 449-5959 E-mail: Toni.Post@cdph.ca.gov	Phone: (562) 658-1333 Fax: (562) 401-5994 E-mail: ssabet@ph.lacounty.gov

C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.

5. Services to be Performed

Contractor shall perform the following services:

A. As one of twelve (12) participating regional Viral Load Test (VLT) public health laboratories under the CA Department of Public Health's HIV Therapeutic Monitoring Program (TMP), the Contractor will provide VLT services for TMP-eligible clients from Early Intervention Program (EIP) sites and Local Health Jurisdiction (LHJ) sites herein (See this Exhibit, provision 2). VLT services include the following activities which are reimbursable under this contract: measuring HIV-1 RNA in blood samples, participating in both statewide and national proficiency testing programs, purchasing additional equipment if needed upon prior authorization, and conducting additional viral load related tests if needed upon prior authorization.

B. The overall Viral Load Testing (VLT) program will be administered and coordinated jointly between two State Department of Public Health agencies -- Viral and Rickettsial Disease Laboratory (VRDL) in Richmond and the State Office of AIDS (OA) in Sacramento.

C. The Contractor shall perform viral load testing to measure the amount of HIV-1 (RNA copies/ml) in blood samples from TMP-eligible clients in the following three categories.

1) Early Intervention Program (EIP) clients in OA funded EIP sites.

2) Non-EIP clients in non-Part A (former Title I) areas.

3) Non-EIP clients in Part A (Title I) areas.

D. The number of tests performed is not to exceed 30,000 tests per contract year. This number has been determined by the OA based on the number of tests requested by and ultimately awarded to EIP and LHJ sites. The client's medical provider will determine the number of tests per individual and the frequency of testing. However, the EIP or LHJ may, in response to local demand, establish a limit or guideline for the number of free, prepaid tests a client may receive each year through the VLT program. The Office of AIDS may adjust the number of tests awarded to each EIP/LHJ upward or downward during the term of the contract.

Exhibit A
Scope of Work

E. After authorization by OA, participating EIP and LHJ sites will submit specimens to the Contractor (or the local public health laboratory for processing instruction to Contractor). The Contractor will make all necessary arrangements for specimen processing and transport to the Contractor's VLT laboratory.

F. The Contractor shall ensure that samples are processed and shipped using procedures specified by the VLT kit manufacturers. The Contractor will not be reimbursed for tests performed on samples not meeting the manufacturer's specifications.

G. The Contractor shall select one of the four commercially available test kits: Abbott PCR, BioMerieux NucliSens, Roche PCR, or Siemens bDNA.

H. The Contractor shall ensure that VLT results are reported to the submitter within 5 working days (excluding weekends) after the sample was received by the Contractor.

I. Designated EIP staff and individuals authorized by LHJ sites, following Office of AIDS guidelines, shall determine client eligibility and shall complete a VLT Voucher (See Exhibit B, Attachment II, "HIV-1 Viral Load Test Voucher"). Instructions for completing the VLT Voucher will be provided by the State. All specimens submitted to the Contractor with a completed VLT Voucher shall be considered eligible for testing and reimbursement. However, the total number of tests processed must not exceed the number of tests allocated to the EIP or LHJ by the Office of AIDS. OA will inform the Contractor when this limit has been reached.

J. The Contractor shall ensure that a completed VLT Voucher is submitted with each sample. The Contractor will not be reimbursed for tests performed on samples without a complete VLT Voucher. The vouchers shall be retained for a minimum of four years.

K. The Contractor shall ensure that all test results are linked to the Client Unique Record Number (URN) which is recorded on the VLT Voucher. The Contractor will not be reimbursed for tests performed on samples not linked to a Client URN. All valid test results are to be confirmed by VRDL.

L. The Contractor shall enter all data elements from VLT Voucher into an appropriate spreadsheet or database and transmit the data electronically to the VRDL on a monthly basis. Data must be submitted within 30 calendar days after the end of the reporting period. For example, March data would be due to VRDL by April 30. Data elements include:

1) VLT Location
2) Date Sample Collected
3) Client Ethnicity
4) Client Unique Record Number (URN unencrypted)
5) Blood collection date
6) Client Date of Birth
7) Client Gender
8) ZIP Code of Client's Primary Residence
9) Client Income
10) Client Category
11) Laboratory Accession Number (if assigned)
12) Date Result Reported
13) Test Result (RNA copies/ml)
14) Voucher Number
15) Invoice Number

Exhibit A
Scope of Work

M. The Contractor shall also enroll in a national proficiency program (e.g. CAP, AAB, CDC) at the earliest opportunity and report the results of the proficiency testing to the VRDL. The annual subscription reimbursement of such programs is not to exceed $475 and will be reimbursable under this contract with prior written authorization from the VRDL. The proficiency program will consist of testing a panel of 5 standardized samples 3 times per year (total of 15 samples). Proficiency program testing will be performed and reimbursed by the same mechanism as all other VLT tests at $100 per test.

N. Any additional VLT-related tests which may be recommended by OA's Medical Advisory Committee and authorized by OA and VRDL may be reimbursable under this contract (e.g. quantitative DNA testing not to exceed $100 per test). Prior written authorization by VRDL and OA is required before implementation of any new test. The appropriate cost for such testing will be negotiated prior to approval. Six months into the term of this contract, an assessment will be done to determine if a formal contract amendment is necessary to include these additional tests. The test fees identified in this paragraph will reduce the amount of HIV-1 VLTs to remain within the yearly budget.

O. The OA and VRDL reserve the right to modify the assignment of counties based on program priorities.

6. Allowable Informal Scope of Work Changes

A. The Contractor or the State may propose informal changes or revisions to the activities, tasks, deliverables and/or performance time frames specified in the Scope of Work, provided such changes do not alter the overall goals and basic purpose of the agreement.

B. Informal SOW changes may include the substitution of specified activities or tasks; the alteration or substitution of agreement deliverables and modifications to anticipated completion/target dates.

C. Informal SOW changes processed hereunder, shall not require a formal agreement amendment, provided the Contractor's annual budget does not increase or decrease as a result of the informal SOW change.

D. Unless otherwise stipulated in this agreement, all informal SOW changes and revisions are subject to prior written approval by the State.

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 agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates and/or allowable costs specified herein.

B. Invoices shall include the Agreement Number and shall be submitted monthly in arrears to:

Attn: Invoice Desk
California Department of Public Health
Office of AIDS
MS 7700
P O Box 997426
Sacramento, CA 95899-7426

C. Invoices shall:

1) Be prepared on Contractor letterhead. If invoices are not on produced letterhead invoices must be signed by an authorized official, employee or agent certifying that the expenditures claimed represent actual expenses for the service performed under this contract.
2) Bear the Contractor's name as shown on the agreement.
3) Identify the billing and/or performance period covered by the invoice.
4) Itemize costs for the billing period in the same or greater level of detail as indicated in this agreement. Subject to the terms of this agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by CDPH.

D. **Rates Payable**

1) Contractor will be reimbursed for services satisfactorily performed based on the following rate schedule:

$ 100.00 per test administered for HIV-1 Viral Load Test.

2) Reimbursement will be on the basis of a fixed price per Viral Load Test including a small number of other specifically approved expenditures (e.g. required equipment or commercial proficiency programs) that require prior written authorization. Each test result shall be reported to the submitter within 5 working days and shall be reported to VRDL along with the required voucher data. Voucher data must be submitted on a monthly basis to VRDL within 30 calendar days after the end of the reporting period. Monthly invoices must be itemized by a voucher number.

In return for the $100.00 per test fee, the Contractor shall provide all necessary personnel, test kits, materials, and all transportation costs. It shall be the responsibility of the VRDL and OA to monitor the number of tests performed for each EIP and LHJ authorized site and to notify in writing the Public Health Laboratory, and the EIP/LHJ site when the allocation of tests has been expended.

Exhibit B
Budget Detail and Payment Provisions

3) The maximum number of regional client Viral Load Tests performed by the Contractor shall not exceed 30,000 per contract year.

   30,000 tests x $100.00 per test = $3,000,000 per contract year

4) If specifically approved expenditures for necessary equipment purchases (for which a formal amendment will be submitted), proficiency program costs, or additional VLT-related tests referenced in this exhibit are charged to this agreement, the maximum number of client Viral Load Tests will be reduced so that all costs remain within the $3,000,000 budget per contract year.

5) The Contractor may purchase any additional equipment (e.g. an ultra-centrifuge, cost not exceed $10,000) necessary to implement changes in VLT methods (e.g. changes recommended by the OA Medical Advisory Committee), which are authorized by the OA and VRDL. A formal amendment will be submitted if such purchases are warranted.

6) The Contractor shall also enroll in a national proficiency program (e.g. CAP, AAB, CDC) at the earliest opportunity and report the results of the proficiency testing to the VRDL. The annual subscription reimbursement of such programs is not to exceed $475 and will be reimbursable under this contract with prior written authorization from the VRDL. The proficiency program will consist of testing a panel of 5 standardized samples 3 times per year (total of 15 samples). Proficiency program testing will be performed and reimbursed by the same mechanism as all other VLT tests at $100 per test.

2. Budget Contingency Clause

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

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

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) $3,000,000 for the budget period of 07/01/08 through 06/30/09
   2) $3,000,000 for the budget period of 07/01/09 through 06/30/10
   3) $3,000,000 for the budget period of 07/01/10 through 06/30/11

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.

Exhibit B
Budget Detail and Payment Provisions

5. Timely Submission of Final Invoice

A final undisputed invoice shall be submitted for payment no more than ninety (90) calendar days following the expiration or termination date of this agreement, unless a later or alternate deadline is agreed to in writing by the program contract manager. Said invoice should be clearly marked "Final Invoice", thus indicating that all payment obligations of the State under this agreement have ceased and that no further payments are due or outstanding.

A. The State may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written State approval of an alternate final invoice submission deadline. Written State approval shall be sought from the program contract manager prior to the expiration or termination date of this agreement.

B. The Contractor is hereby advised of its obligation to submit, with the final invoice, a **"Contractor's Release (Exhibit F)"** acknowledging submission of the final invoice to the State and certifying the approximate percentage amount, if any, of recycled products used in performance of this agreement.

6. Expense Allowability / Fiscal Documentation

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

B. Contractor shall maintain for review and audit and supply to CDPH upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.

C. If the allowability 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.

D. Costs and/or expenses deemed unallowable are subject to recovery by CDPH. See provision 7 in this exhibit entitled, "Recovery of Overpayments" for more information.

7. Recovery of Overpayments

A. 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) Contractor's remittance to the State of the full amount of the audit exception within 30 days following the State's request for repayment;

2) A repayment schedule which is agreeable to both the State and the Contractor.

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.

Exhibit B
Budget Detail and Payment Provisions

C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 days after Contractor's receipt of the State's demand for repayment.

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

MUST BE PRINTED ON AGENCY LETTERHEAD

County of Los Angeles
08-85400

Exhibit B, Attachment I

INVOICE FORMAT

OA Date Stamp

Contractor Name (as it appears on the STD 213)

Mailing Address

Contract Number

Period of Service (month / year)

Program Name: HIV-1 VIRAL LOAD TEST - THERAPEUTIC MONITORING PROGRAM

		Amount
Total Number of Viral Load Tests		
Viral Load @ $100 per completed test		$
Proficiency Tests @ $100 per completed test		$
Annual Proficiency Subscription		$
TOTAL INVOICE		$

I hereby certify that the amount claimed is accurate and a true representation of the amount owed.

Authorized Signature

Date

Print name of authorized signature

Title

OA Review:

(Initial & Date)

No.	Client URN	Voucher No.	Date Specimen Rec'd	Date of Result
1	KUNP1109722			
2	RBSM0457411			
3	RBSM0457411			
4	DJSP035412			
5	ENVD0805652			

FOR OA USE ONLY

Office of AIDS
California Department of Public Health
MS 7700
P.O. Box 997426
Sacramento, CA 95899-7426

State of California—Health and Human Services Agency
California Department of Public Health
Office of AIDS

Exhibit B, Attachment II - HIV -1 Viral Load Test Voucher (Sample)

Early Intervention Section
Therapeutic Monitoring Program

FOR USE IN FY 2008/2009 ONLY

HIV-1 VIRAL LOAD TEST VOUCHER

Complete fully and submit with each viral load test sample.

NOTE: All data fields are **required** except for client medical record number and submitting physician name.

ELIGIBILITY CERTIFICATION:
This client has an annual adjusted gross income of less than $50,000 and does not have Medi-Cal, Medicare, or other third party insurance. City/county indigent programs do not fall under the category of third party insurance.

❑ Yes _____ Your Initials

TEST REQUESTED:

Abbott PCR: ❑ RealTime HIV-1
BioMerieux: ❑ NucliSens
Roche PCR: ❑ Standard ❑ Ultrasensitive ❑ TaqMan
Siemens: ❑ bDNA

AUTHORIZED LOCATION

Address (number, street)

City

VLT Location Number (4 digits) | Submitting Physician Name

CLIENT DATE OF BIRTH (mm/dd/yyyy)

__ __/__ __/__ __ __ __

GENDER ***(select only one)***

❑ (1) Male ❑ (3) Transgender (Male to Female)
❑ (2) Female ❑ (4) Transgender (Female to Male)
❑ (9) Unknown

ZIP CODE OF PRIMARY RESIDENCE

__ __ __ __ __

❑ (99999) Unknown
❑ (99997) Homeless

ETHNICITY ***(select only one)***

❑ (100) White (non-Hispanic)
❑ (200) Black (non-Hispanic), African-American
❑ (300) Hispanic
❑ (400) Asian, Pacific Islander
❑ (500) Native American/Alaskan
❑ (600) Other
❑ (999) Unknown

Client Unique Record Number (URN) - *Required for ALL clients*
(See back to compose unencrypted 11 characters)

__ __/__ __/__ __/__ __/__ __/__

***CLIENT NAME** (last, first, mi)

*Regional lab—remove name before sending voucher data to VRDL.

CLIENT MEDICAL RECORD NUMBER (optional)

CLIENT CATEGORY ***(select only one)***

State Early Intervention Program (EIP) client ❑ (1)
Non-EIP client in non-Part A (former Title I) area ❑ (2)
Non-EIP client in Part A (former Title I) area ❑ (3)

INDIVIDUAL *ANNUAL* FEDERAL ADJUSTED GROSS INCOME

$

SPECIMEN

Date blood collected (mm/dd/yyyy) __ __/__ __/__ __ __ __
Time blood collected __ __:__ __ ❑ a.m. ❑ p.m.

Date plasma frozen (mm/dd/yyyy) __ __/__ __/__ __ __ __
Time plasma frozen __ __:__ __ ❑ a.m. ❑ p.m.

Sample prepared and shipped according to the test manufacturer's instructions? ❑ Yes ❑ No

FOR LABORATORY USE ONLY

Laboratory accession number	
Date specimen was received __ __/__ __/__ __ __ __	Time specimen was received __ __:__ __ ❑ a.m. ❑ p.m.
Date result was reported __ __/__ __/__ __ __ __	Microbiologist/technologist initials
Standard (RNA copies/ml)	Ultrasensitive (RNA copies/ml)

Voucher Number: _____

Distribution: Yellow—Submit with sample Pink—Client chart Blue—Program copy

GTC 307

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 (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.

S:\ADMIN\HOMEPAGE\GTC-307.doc

CCC-307

CERTIFICATION

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

Contractor/Bidder Firm Name (Printed)	*Federal ID Number*
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	*Executed in the County of*

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

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

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

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

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

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

1) receive a copy of the company's drug-free workplace policy statement; and,
2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

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

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

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

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

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

6. SWEATFREE CODE OF CONDUCT:

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

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations,

or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over $100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

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

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

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

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

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

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

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

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

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

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

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

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

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

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

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

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

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

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

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

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

Special Terms and Conditions

(For State funded subvention, local assistance and direct service contracts and grant agreements)

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or 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", "California Department of Health Services", "Department of Health Services", "CDPH", "CDHS", and "DHS" shall all 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, a specified condition applies, etc.). The provisions herein apply to this Agreement unless the provisions are removed by reference on the face of the Agreement, the provisions are superseded by an alternate provision appearing elsewhere in the Agreement, or the applicable conditions do not exist.

Index of Special Terms and Conditions

1. Travel and Per Diem Reimbursement
2. Procurement Rules
3. Equipment Ownership / Inventory / Disposition
4. Subcontract Requirements
5. Income Restrictions
6. Audit and Record Retention
7. Site Inspection
8. Intellectual Property Rights
9. Prior Approval of Training Seminars, Workshops, or Conferences
10. Confidentiality of Information
11. Documents, Publications and Written Reports
12. Dispute Resolution Process
13. Financial and Compliance Audit Requirements
14. Novation Requirements
15. Payment Withholds
16. Performance Evaluation
17. Officials Not to Benefit
18. Four-Digit Date Compliance
19. Union Organizing
20. Contract Uniformity (Fringe Benefit Allowability)
21. Prohibited Use of State Funds for Software

1. Travel and Per Diem Reimbursement

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

Reimbursement for travel and per diem expenses from the California Department of Public Health (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.

2. 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 funds.)

a. Equipment definitions

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

(1) **Major equipment**: A tangible or intangible item having a base unit cost of <u>$5,000 or more</u> 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 <u>less than $5,000</u> 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 2. Paragraph c of Provision 2 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 2. Paragraph b of Provision 2 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 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 2 by giving the Contractor no less than 30 calendar days written notice.

3. 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 funds.)

a. Wherever the terms equipment and/or property are used in Provision 3, the definitions in Provision 2, 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, the 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 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. In the event of state equipment and/or property theft, 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 period of contract extension 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).

[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 the California Department of Public Health (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.

4. 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 exceeding $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 the 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, 9, 10, 11, 17, 21, and/or other numbered provisions herein that are deemed applicable.

5. 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.

6. Audit and Record Retention

(Applicable to agreements over $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 purposes 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 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.

7. 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.

8. 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 Section 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., 2006, etc.]*, California Department of Public Health. This material may not be reproduced or disseminated without prior written permission from the California Department of Public Health." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Patent Rights

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

e. Third-Party Intellectual Property

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

9. 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.

10. 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.

11. 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 contract 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 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.

12. 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, Subchapter 2.5, commencing with Section 251, 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.

13. 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 (See 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 13c(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 Agreement 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.

14. 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.

15. 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 contract, 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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 the Agreement, the Contractor during a one-year agreement term may only claim up to three weeks of vacation and twelve days of sick leave 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..

21. 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.

Exhibit E
Additional Provisions

1. Additional Incorporated Exhibits

A. The following documents and any subsequent updates 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, under separate cover. CDPH will maintain on file, all documents referenced herein and any subsequent updates.

1) CDPH Health Administrative Manual 6-1000.

2. Cancellation / Termination

A. This agreement may be cancelled or terminated without cause by either party by giving thirty (30) calendar days advance written notice to the other party. Such notification shall state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements.

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

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 termination or cancellation, provided such expenses do not exceed the stated maximum amounts payable.

3. Avoidance of Conflicts of Interest by Contractor

A. CDPH 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, CDPH 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 CDPH review and prior approval.

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 contract.

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.

Exhibit E
Additional Provisions

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.

4. Insurance Requirements

The Contractor agrees to furnish to CDPH a letter certifying that it possesses and/or will obtain self-insurance in an amount that is sufficient to cover bodily injury and property damage liability combined that might arise under this agreement. Self insurance coverage shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal injury, and other applicable liability that may arise under this agreement. The 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.

5. Freeze Exemptions

A. Contractor agrees that any hiring freeze adopted during the term of this contract shall not be applied to the positions funded, in whole or part, by this contract.

B. Contractor agrees not to implement any personnel policy, which may adversely affect performance or the positions funded, in whole or part, by this contract.

C. Contractor agrees that any travel freeze or travel limitation policy adopted during the term of this contract shall not restrict travel funded, in whole or part, by this contract.

D. Contractor agrees that any purchasing freeze or purchase limitation policy adopted during the term of this contract shall not restrict or limit purchases funded, in whole or part, by this contract.

A. changes, and/or other procedural changes.

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** _____ 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): _____

Signature of Contractor or Official Designee: _____ Date: _____

Printed Name/Title of Person Signing: _____

CDPH Distribution: Accounting (Original) Program

Exhibit G
HIPAA Business Associate Addendum

I. Recitals

A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations").

B. The California Department of Public Health ("CDPH") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI") pursuant to HIPAA regulations.

C. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.

D. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.

E. As set forth in this Agreement, Contractor is the Business Associate of CDPH that provides services, arranges, performs or assists in the performance of functions or activities on behalf of CDPH and creates, receives, maintains, transmits, uses or discloses PHI.

F. CDPH and Business Associate desire to protect the privacy and provide for the security of PHI created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations.

G. The purpose of the Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations, and other applicable laws.

H. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms defined in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

Permitted Uses and Disclosures of PHI by Business Associate

A. ***Permitted Uses and Disclosures.*** Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of CDPH, provided that such use or disclosure would not violate the HIPAA regulations, if done by CDPH.

B. ***Specific Use and Disclosure Provisions.*** Except as otherwise indicated in this Addendum, Business Associate may:

1) ***Use and disclose for management and administration.*** Use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities

of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

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

1. Responsibilities of Business Associate

Business Associate agrees:

A. ***Nondisclosure.*** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.

B. ***Safeguards.*** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of CDPH; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section C, Security, below. Business Associate will provide CDPH with its current and updated policies.

C. ***Security.*** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI, and provide data security procedures for the use of CDPH at the end of the contract period. These steps shall include, at a minimum, compliance with all of the data system security precautions set forth in Exhibit H, the CDPH Information Security Office, Information Systems Security Requirements for Projects (SR1 CDPH-ISO Project Requirements).

Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with CDPH.

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

E. ***Business Associate's Agents.*** To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of CDPH, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including implementation of reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI; and to incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents or subcontractors.

F. ***Availability of Information to CDPH and Individuals.*** To provide access as CDPH may require, and in the time and manner designated by CDPH (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to CDPH (or, as directed by CDPH), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of

records maintained for CDPH that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for CDPH health care component health plans; or those records used to make decisions about individuals on behalf of CDPH. Business Associate shall use the forms and processes developed by CDPH for this purpose and shall respond to requests for access to records transmitted by CDPH within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.

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

H. ***Internal Practices.*** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from CDPH, or created or received by Business Associate on behalf of CDPH, available to CDPH or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by CDPH or by the Secretary, for purposes of determining CDPH's compliance with the HIPAA regulations.

I. ***Documentation of Disclosures.*** To document and make available to CDPH or (at the direction of CDPH) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.

J. ***Notification of Breach.*** During the term of this Agreement:

1) ***Discovery of Breach.*** To notify CDPH ***immediately by telephone call plus email or fax*** upon the discovery of breach of security of PHI in computerized form if the PHI was, or is reasonably believed to have been, acquired by an unauthorized person, or ***within 24 hours by email or fax*** of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the CDPH ITSD Help Desk. Business Associate shall take:

   i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and

   ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

2) ***Investigation of Breach.*** To immediately investigate such security incident, breach, or unauthorized use or disclosure of PHI or confidential data. ***Within 72 hours of the discovery***, to notify the CDPH Program Contract Manager(s), the CDPH Privacy Officer, and the CDPH Chief Information Security Officer of:

   i. What data elements were involved and the extent of the data involved in the breach,

   ii. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data,

   iii. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized,

   iv. A description of the probable causes of the improper use or disclosure; and

v. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.

3) ***Written Report.*** To provide a written report of the investigation to the CDPH Program Contract Managers, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. 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 improper use or disclosure.

4) ***Notification of Individuals.*** To notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and to pay any costs of such notifications, as well as any costs associated with the breach. The CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer shall approve the time, manner and content of any such notifications.

5) ***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 giving written notice to the Contractor. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

CDPH Program Contract Manager	**CDPH Privacy Officer**	**CDPH Chief Information Security Officer**
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer Privacy Office, c/o Office of Legal Services California Department of Public Health P.O. Box 997377, MS 0505 Sacramento, CA 95899-7377 Email: privacy@cdph.ca.gov Telephone: (916) 440-7700	Chief Information Security Officer Information Security Office California Department of Public Health P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413 Email: cdphiso@cdph.ca.gov Telephone: IT Service Desk (916) 440-7000 or (800) 579-0874

K. ***Employee Training and Discipline.*** To train and use reasonable measures to ensure compliance with the requirements of this Addendum by employees who assist in the performance of functions or activities on behalf of CDPH under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Addendum, including by termination of employment. In complying with the provisions of this section K, Business Associate shall observe the following requirements:

1) Business Associate shall provide information privacy and security training, at least annually, at its own expense, to all its employees who assist in the performance of functions or activities on behalf of CDPH under this Agreement and use or disclose PHI.

2) Business Associate shall require each employee who receives information privacy and security training to sign a certification, indicating the employee's name and the date on which the training was completed.

3) Business Associate shall retain each employee's written certifications for CDPH inspection for a period of three years following contract termination.

2. Obligations of CDPH

CDPH agrees to:

A. ***Notice of Privacy Practices.*** Provide Business Associate with applicable and relevant Notice(s) of Privacy Practices that CDPH HIPAA-covered healthcare components produce in accordance with 45 CFR 164.520, as well as any changes to such notice(s).

B. ***Permission by Individuals for Use and Disclosure of PHI.*** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.

C. ***Notification of Restrictions.*** Notify the Business Associate of any restriction to the use or disclosure of PHI that CDPH has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.

D. ***Requests Conflicting with HIPAA Rules.*** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by CDPH.

3. Audits, Inspection and Enforcement

From time to time, CDPH may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the CDPH Privacy Officer or the CDPH Chief Information Security Officer in writing. The fact that CDPH inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does CDPH's:

A. Failure to detect or

B. Detection but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of CDPH's enforcement rights under this Agreement and this Addendum.

4. Termination

A. ***Termination for Cause.*** Upon CDPH's knowledge of a material breach of this Addendum by Business Associate, CDPH shall:

1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by CDPH;

2) Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or

3) If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.

B. ***Judicial or Administrative Proceedings.*** Business Associate will notify CDPH if it is named as a defendant in a criminal proceeding for a violation of HIPAA. CDPH may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. CDPH may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.

C. ***Effect of Termination.*** Upon termination or expiration of this Agreement for any reason, Business Associate shall promptly return or destroy all PHI received from CDPH (or created or received by Business Associate on behalf of CDPH) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, shall continue to extend the protections of this Addendum to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

5. Miscellaneous Provisions

A. ***Disclaimer.*** CDPH makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

B. ***Amendment.*** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon CDPH's request, Business Associate agrees to promptly enter into negotiations with CDPH concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. CDPH may terminate this Agreement upon thirty (30) days written notice in the event:

1) Business Associate does not promptly enter into negotiations to amend this Addendum when requested by CDPH pursuant to this Section or

2) Business Associate does not enter into an amendment providing assurances regarding the safeguarding and security of PHI that CDPH in its sole discretion deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.

C. ***Assistance in Litigation or Administrative Proceedings.*** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to CDPH at no cost to CDPH to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CDPH, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.

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

Exhibit G
HIPAA Business Associate Addendum

E. ***Interpretation.*** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.

F. ***Regulatory References.*** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.

G. ***Survival.*** The respective rights and obligations of Business Associate under Section 6.C of this Addendum shall survive the termination or expiration of this Agreement.

H. ***No Waiver of Obligations.*** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

Exhibit H

INFORMATION SECURITY OFFICE

Information Systems Security Requirements for Projects (ISO/SR1)

Version 3.5

October 2007

Revision History

Doc No / Rev No	Revision Date	Revised By	Description of Revision / Change
S19 / R1.5	1/10/2007	A. Lancashire CDHS	Reformatting changes
SR1 / R1.0	9/12/2007	M. Serapio DHCS, B. Kelsey CDPH	Updated to address new best practices (previous version had dependencies to best practices from pre-SOA), fill existing regulatory gaps, remove vendor dependencies, reword language to make applicable to COTS/MOTS applications, and re-designated document number and name.
SR1/v1.5	9/14/2007	I. Sanford DHCS	Various grammatical and definition changes. Clarification of terms and responsibilities.
SR1/v2.0	9/21/2007	I. Sanford DHCS	Post team review updates
SR1/v2.1	10/17/2007	J. Cleveland CDPH	2nd team review comments/changes
SR1/V2.2	10/21/2007	J. Cleveland CDPH	Added Admin User ID and password section from Ian Sanford and Data Query section from Brett Kelsey.
SR1/V2.3	10/22/2007	J. Cleveland CDPH	Modifications to Admin User ID and password section and Data Query section.
SR1/V3.0	10/25/2007	J. Cleveland CDPH	Minor grammatical changes, removal of dynamic web links, and added COTS language in C.8.
SR1/V3.5	10/26/2007	J. Cleveland CDPH	Addition of Sections A.13, A.14, B.12, B.13, B.14, B.15, and B.16 for the purpose of covering Privacy, when used in conjunction with BAAs.

Type: **ISO Requirements**	
Issued: **October 26, 2007**	*Doc Number:* **SR 1/v3.5**
Revised:	
Title: **Information Systems Security Requirements for Projects**	

I. Purpose

This document provides the minimum security requirements, mandated by the Information Security Office (ISO) from projects governed and/or subject to the policies and standards of the California Department of Public Health (CDPH). Projects that intend to deploy systems/applications into the Department's system infrastructure or will consume Department information system services are also subject to these minimum security requirements.

This document is intended to assist the Department and its service consumers in understanding the criteria the Department will use when evaluating and certifying the system design and security features and protocols used by project solutions consuming Department services. The security requirements herewith will also be used in conjunction with the Department ISO's compliance review program of its information system services consumers.

This document will serve as a universal set of requirements which must be met regardless of physical hosting location or entities providing operations and maintenance responsibility. These requirements do not serve any specific project nor do they prescribe any specific implementation technology.

II. Scope of Requirements

The information security requirements herein are organized in five categories (sections) and address at a minimum:

- Administrative/Management Safeguards
- Technical and Operational Safeguards
- Solution Architecture
- Documentation of Solution
- ISO Notifications

III. Contact

Chief Information Security Officer
California Department of Public Health
Information Security Office
1615 Capital Avenue
Sacramento, Ca 95814

IV. Information Systems Security Requirements

A. Administrative / Management Safeguards

1. Workforce Confidentiality Statement

All persons working with Department information must sign a confidentiality statement. The statement must include at a minimum; General Use, Security and Privacy safeguards, Unacceptable Use, Audit, and Enforcement policies. (Contact the ISO for the current version of the Security & Confidentiality form in use.)

The statement must be signed by the project member prior to being granted access to the Department's information. The statement must be renewed annually.

2. Access Authorization

Project/Program must implement and document clear rules and processes for vetting and granting authorizations; and procedures for the supervision of workforce members who work with Department information or in locations where it might be accessed.

3. Access Authorization Maintenance

On at least a semi-annual basis, Project/Program will review and remove all authorizations for individuals who have left the department, transferred to another unit, or assumed new job duties within the department.

4. Information System Activity Review

Project/Program must implement and document procedures to regularly review records of information system activity, such as audit logs, access reports, and security incident tracking reports.

5. Periodic System Security Review

All systems shall allow for periodic system security reviews that provide assurance that management, operations, personnel, and technical controls are functioning effectively and providing adequate levels of protection.

The reviews may include technical tools and security procedures such as virus scanners, vulnerability assessment products (which look for known security problems, configuration errors, and the installation of the latest hardware/software "patches"), and penetration testing.

6. Periodic System Log Review

All systems processing and/or storing Department information shall have a method or procedure in place to create and review system logs for unauthorized access. Logs may be stored within the system or on a centralized logging server or service, and shall be maintained for a minimum of three years.

7. Business Impact Analysis

Project/Program will conduct annually a Business Impact Analysis of the application to determine the Maximum Acceptable Outage (MAO), cost of lost functionality, system component dependencies, business function dependencies, and business partner dependencies.

8. Change Control

All systems processing and/or storing Department information must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity, and availability of information.

For those systems running within the Department's environment and/or are consuming Department services, those systems shall comply with DTS and Department standards for change control process and procedures.

9. Incident Response

Establish procedures for responding to an emergency or other occurrence (e.g., fire, vandalism, system failure, and natural disaster) that damages systems that contain electronic protected health information.

The emergency response procedures shall be added to the existing Operational Recovery Plan (ORP). The ORP shall address what to do if a computer system and/or the information files are violated, lost, damaged, or inaccessible.

10. Disaster Recovery

Establish procedures that allow facility access in support of restoration of lost information under the ORP and emergency mode operations plan in the event of an emergency.

The restoration/recovery support procedures shall be added to the existing Operational Recovery Plan (ORP) to restore any loss of information and assure continuity of computing operations for support of the application and information.

Recovery procedures shall be developed using Appendix "J" Template from the Department's ORP.

11. Emergency Mode Operation Plan

Establish an Emergency Mode Operation Plan to enable continuation of critical business processes for protection of the security of electronic protected health information while operating in emergency mode. This plan shall be added to the existing ORP.

12. Periodic System Recovery Testing

All systems, as part of a new or existing project, shall allow for periodic system recovery testing. The period between tests should be defined as part of the project and be consistent with relevant department disaster recovery standards. Such testing should provide assurances that plans (Incident Response, Disaster Recovery, Emergency Mode Operation, and Data Backup) and controls (management, operations, personnel, and technical) are functioning effectively and providing adequate levels of protection during an incident, disaster, or breach.

13. Supervision of Data

Public Health Information (PHI) 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. Department PHI in paper form shall not be left unattended at any time in vehicles or planes and shall not be contained in checked-in baggage on commercial airplanes.

14. Escorting Visitors

Visitors to areas where Department PHI is contained shall be escorted and Department PHI shall be kept out of sight while visitors are in the area.

B. Technical and Operational Safeguards

1. System Security Compliance

All project systems shall comply with applicable department security policies and requirements, as specified in the State Administrative Manual, Health Administrative Manual, HIPAA, Privacy Act, and any other applicable state or federal regulation. All security safeguards and precautions shall be subject to the approval of the Department ISO.

2. Virus Protection

All systems shall install and actively use comprehensive third-party anti-virus and virus protection software, and routinely update such software when updates are Released. All security safeguards and precautions shall be subject to the approval of the Department ISO.

3. Patch Management

All systems shall install and actively use comprehensive third-party patch management program and routinely update system and application software when updates are released. All security safeguards and precautions shall be subject to the approval of the Department ISO.

4. Encrypted Electronic Transmissions

All information transmissions that contain confidential information must be encrypted end-to-end using an industry-recognized encryption standard. The electronic transport must utilize Secure Socket Layer (SSL) and Department information and confidential information shall be encrypted at the minimum of 128 bit AES or 3DES (Triple DES) if AES is unavailable. Equivalent or stronger algorithms may be used upon approval of the Department ISO.

5. Encrypted Data Storage

All confidential information must be encrypted when stored using a department approved encryption standard. Confidential information shall be encrypted at the minimum of 128 bit AES or 3DES (Triple DES) if AES is unavailable. Equivalent or stronger algorithms may be used upon approval of the Department ISO.

6. Workstation / Laptop Encryption

All workstations and laptops that process and/or store Department information must be encrypted with a Department approved solution or a solution using a vendor product specified on the California Strategic Sourced Initiative (CSSI) located at the following link: www.pd.dgs.ca.gov/masters/EncryptionSoftware.html

7. Removable Media Encryption

All electronic files that contain Department information must be encrypted when stored on any removable media type device (i.e. USB thumb drives, floppies, CD/DVD, tape backup, etc.) with a Department approved solution or a solution using a vendor product specified on the California Strategic Sourced Initiative (CSSI) located at the following link: www.pd.dgs.ca.gov/masters/EncryptionSoftware.html

8. Secure Connectivity

All transmission and data-links between the information and application/system and DBMS and the DTS WAN shall be secure between transmission systems as required by regulation, policy or standard and as prescribed for the given application/system.

9. Intrusion Detection and Prevention

All systems that are accessible via the Internet, are critical, or contain ePHI shall install and actively use a Department approved comprehensive third-party real-time host based intrusion detection and prevention program that reports security events directly to the Department ISO. All security safeguards and precautions shall be subject to the approval of Department ISO.

10. Minimum Data Downloads

In accordance with the principle of need-to-know, only the minimum amount of information required to perform necessary business functions should be copied or downloaded.

11. Data Destruction

All Department information must be wiped from systems when the information is no longer necessary. The wipe method must conform to Department of Defense and Department standards for information destruction. Once information has been destroyed, the Department contract manager must be notified. If an agency or other entity is unable to destroy media in accordance with Department standards and provide notification, the media must be returned to the Department after usage for destruction in an approved manner.

12. Confidential Destruction

Department PHI in paper form must be disposed of through confidential means, such as cross cut shredding and pulverizing.

13. Removal of Data

Department PHI in either electronic or paper form shall not be removed from Department premises or from the premises of an authorized vendor or contractor without the written permission of the Department ISO.

14. Faxing of Confidential Information

Facsimile transmissions containing PHI 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 must be verified before sending.

15. Mailing of Confidential Information

Department PHI shall only be mailed using secure methods. Large volume mailings of Department PHI must 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 Department approved solution or a solution using a vendor product specified on the CSSI.

C. Solution Architecture

1. System Security Compliance

The system shall comply with all applicable Department security policies and requirements, as well as those specified in the State Administrative Manual, Health Administrative Manual, HIPAA, Privacy Act, and any other applicable state or federal regulation. All security safeguards and precautions shall be subject to the approval of the Department ISO.

2. Access Point Warning Banner

All systems containing Department information shall display a warning banner stating that information is confidential, activity is logged, and system use is for business purposes only. User shall be directed to log off the system if they do not agree with these requirements.

The following warning banner shall be used for all access points (e.g., desktops, laptops, web applications, mainframe applications, servers and network devices):

WARNING: This is a State of California computer system that is for official use by authorized users and is subject to being monitored and/or restricted at any time. Unauthorized or improper use of this system may result in administrative disciplinary action and/or civil and criminal penalties. By continuing to use this system you indicate your awareness of and consent to these terms and conditions of use.

LOG OFF IMMEDIATELY, if you do not agree to the conditions stated in this warning.

3. Layered Application Design

Application must be able to be segmented into a layered application design separating at a minimum the Presentation, Application/Business Logic, and Data Access Logic, and Data Persistence/Database layers.

4. Separation of Layers

The Presentation, Application/Business Logic, and Data Access Logic layer must be separated physically by a firewall regardless of physical implementation.

Vendor-provided commercial off-the-shelf (COTS) packages or components where physical separation of layers is not possible requires ISO approval.

5. Business Logic Layer Communication

Any system request made to the Business logic layer must be authenticated.

6. Data Access Logic Layer Design

The Data Access Logic Layer may take the form of stored procedures, database API, Data Access Objects/Components, Data Access Middleware, Shared Data Services, or Secure Web Service.

7. Data Access Logic Layer Communication

Any system request made to the Data Access logic layer must be authenticated and authorized.

8. Data Persistence/Database Layer Isolation

No direct access to the Data Persistence/Database layer will be permitted, except through the Data Access logic layer.

All calls to the Data Persistence/Database layer will be made through the Data Access logic layer as a trusted sub-system that utilizes a single database access account to all transactions.

Vendor-provided commercial off-the-shelf (COTS) packages or components where physical separation of Data Access Logic layer from Data Persistence/Database layer is not possible require ISO approval.

9. User Input Validation

All user input must be validated. The system must manage client input controls from server side to the extent possible. All third-party client side input controls must be documented and approved by the Department ISO.

10. Data Input Validation

All user information input must be validated before being committed to the database or other application information repository.

11. Data Queries

All Data queries (including In-line SQL calls) will not be allowed from the Presentation or the Business Logic layers unless validated for appropriate use of query language and validated for appropriate quantity/quality of data input. All data queries solution must be approved by department CISO.

Database table names and column names must not be exposed. Applications must use an alias for every table and column.

Dynamic SQL will not be permitted from the Presentation Layer without prior approval from the department ISO.

12. Username/Password Based Authentication

When usernames and passwords are going to be used as the method for system authentication the following for each must be met:

- Username requirements:
  - Usernames are unique and are traceable to an individual worker.
  - Usernames are NOT to be shared and never hard-coded into system logic.
- Password requirements:
  - Are not to be shared.
  - Must be 8 characters or more in length.
  - Must NOT be a word found in the dictionary, regardless of language.
  - Password must NOT be stored in clear text.
  - Must be changed at least every 60 days.
  - Must be changed immediately if revealed or compromised.
  - Passwords must be encrypted using irreversible industry-accepted strong encryption.
  - Accounts must be locked after 3 failed logon attempts.
  - Account lock-out reset timers must be set for a minimum of 15 minutes.
  - 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 through 9); and
    - Non-alphanumeric characters (punctuation symbols).

13. Administrator Username/Password Based Authentication

- Username requirements:
  - Must be unique and are traceable to an individual person.
  - Must NOT be shared.
  - Must never be hard-coded into system logic.
  - Must NOT be the same across different zones (e.g. Web Zone, Internal network, and Test Labs / Environments).
  - The default built-in Administrator account must be renamed and disabled.
  - The naming convention for administrator usernames must not make it obvious that usernames belong to administrator accounts.
  - If a generic Administrator account is created:
    - It must only be used in an Emergency.
    - It is NOT to be used for routine maintenance.
    - The password storage and management process for generic administrator accounts must be approved by the Department ISO.
- Password requirements:
  - Must not be the same as any of the previous 10 passwords.

- Must not to be shared.
- Must NOT be the same across different zones (e.g. Web Zone, Internal network, and Test Labs / Environments).
- Must be 12 characters or more in length.
- Must NOT be a word found in the dictionary, regardless of language.
- Password must NOT be stored in clear text.
- Must be changed at least every 60 days.
- Must be changed immediately if revealed, or compromised.
- Must be changed immediately upon the termination or transfer of an employee with knowledge of the password.
- Passwords must be encrypted using industry accepted, irreversible strong encryption.
- Accounts must be locked after 3 failed logon attempts.
- Account lock-out timers must be set for at least 60 minutes.
- Must be comprised 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 through 9);
    - Non-alphanumeric characters (punctuation symbols).

14. Role - Based Access

Any system deployed during, or as a result of a project, shall provide secure role-based access for authorization utilizing the principle of least privilege at all layers/tiers.

15. User / Entity Authentication Logging

System must log success and failures of user authentication at all layers as well as log all user transactions at the database layer as required by regulation, policy or standard and as prescribed for the given application/system. This logging shall be included for all user privilege levels including but not limited to systems administrators. This requirement applies to systems that process, store, and/or interface with PII and/or confidential information.

16. Automatic System Session Expiration

The system must provide an automatic timeout of user sessions after 20 minutes of inactivity.

17. Automatic System Lock-out and Reporting

The system must provide an automatic lock-out of users and a means to audit a minimum of 3 failed log-in attempts. The means of providing audit information must be approved by the departmental ISO.

18. Role-based Access to Audit Functions and Data

All systems/applications will implement role-based access to auditing functions and audit trail information utilizing the principle of least privilege

19. Secure Online Access to Audit Functions

All systems / applications will implement a secure online interface to Audit Capabilities and Reporting by way of application programming interface (API) or network service (or Web Service); to allow Department ISO to view logs, auditing procedures, and audit reporting.

20. Audit Trails

This requirement delineates the (minimum) log information that audit trails should record for any system that contains or is involved in the transmission of confidential information. The information listed below should be available on every system running a production environment. Not only will this information assist with problem resolution efforts and system restore operations, it will also be invaluable to system penetration attack investigations, fraud investigations, and the like.

The system must record (at minimum) the following events and any other events deemed appropriate by the Department ISO:

Transaction Types

- Any and all administrative changes to the system (i.e.: administrative password changes (forgotten password resets), system variables, network configuration changes, disk subsystem modifications, etc).
- Logon failures.
- Logons during non-business hours.
- Program or file access denial.
- Addition, deletion, or modification of users or program access privileges.
- Changes in file access restrictions.
- Database addition, deletion, or modification.
- Copy of files before and after read and write changes.
- Transaction issued.

Individual audit trail records shall contain the information needed to associate each query transaction to its initiator and relevant business purpose. Individual audit trail records should capture at a minimum the following:

Minimum Audit Trail Record Content

- Date and Time Stamp.
- Unique Username of Transaction Initiator.
- Transaction Recorded.
- Success or Failure of Transaction Recorded.
- Relevant business process or application component involved.
- Data captured (if any).

Audit Trail logs shall be maintained at minimum for three years after the occurrence or a set period of time determined by the Program's ISO that would not hinder a detailed forensic investigation of the occurrence. The Department ISO has final approval authority.

D. Documentation of Solution

1. System Configuration

As part of each project, assigned staff will document and maintain a full inventory of the major hardware, software, and communications platforms in use; system configurations; all applications/components with descriptions encompassing the solution; and a description of the solution's security design features and user access control mechanisms. Project will ensure a custodian(s) is assigned to each application/component.

2. Data In Use Classifications

Project will document and maintain information classification matrix of all information elements accessed and/or processed by solution.

The matrix should identify at a minimum:

- information element.
- information classification/sensitivity.
- relevant function/process or where is it used.
- system and database or where is it stored.

3. System Roles and Relationships

Project will document the organizational structure and relationships between systems managers, systems security personnel, and users, including an estimate of the number of users that will have access to Department information within the system solution and an explanation of their job descriptions.

4. Audit Method Documentation

Project will document the solution's auditing features and provide samples of audit reporting.

5. Retention of Documentation

The system/application maintainers will retain documentation, including audit and activity logs, for a minimum of three years (up to seven years) from the date of its creation or the date it was last in effect, whichever is later.

E. ISO Notifications

1. Security Compliance Notification

As part of each project, assigned staff will document how proposed solution meets or addresses the requirements specified in this document and must be submitted to the Department ISO prior to taking custody of Department owned information.

2. Notification of Changes to Solution

Once a project is approved as final by the ISO, no changes will be made to the project scope, documentation, systems or components without a change approval by the ISO.

3. Notification of Breach or Compromise

The system/application maintainers shall immediately and in writing report to the ISO on any and all breaches or compromises of system and/or information security, and shall take such remedial steps as may be necessary to restore security and repair damage, if any.

In the event of a breach or compromise of system and/or information security, the ISO may require a system/application security audit. The ISO shall review the recommendations from the security audit, and make final decisions on the steps necessary to restore security and repair damage.

The system/application maintainers shall properly implement any and all recommendations of the security audit, as approved by the ISO.

EXHIBIT II

RESOLUTION

AUTHORIZING A STANDARD AGREEMENT FOR THE DEPARTMENT OF PUBLIC HEALTH VIRAL LOAD TESTING PROGRAM

The County of Los Angeles Board of Supervisors (hereafter "Board of Supervisors") at the meeting identified below, accept grant funds from the California Department of Public Health (hereafter "CDPH") to support the Public Health Laboratory (hereafter "PHL") Viral Load Testing Program (hereafter "VLT").

WHEREAS, the Department of Public Health (hereafter "DPH"), PHL, received Standard Agreement Number 08-85400 (hereafter "Grant Agreement") from CDPH for grant funds in the amount of $9,000,000 for the period of July 1, 2008 through June 30, 2011.

NOW, THEREFORE, be it resolved that the Board of Supervisors of the County of Los Angeles authorizes and empowers the Director of Public Health, or his designee, to execute in the name of the County of Los Angeles the Grant Agreement and related amendments for the purpose of securing funds for the period of July 1, 2008 through June 30, 2011, to implement and carry out the purposes specified in the Standard Agreement.

The foregoing resolution was passed on _____ day of _____, 2009 adopted by the Board of Supervisors of the County of Los Angeles and ex officio the governing body of all other special assessment and taking districts, agencies and authorities for which said Board so acts.

_____
SACHI A. HAMAI, Executive Officer
of the Board of Supervisors
County of Los Angeles

_____
Jonathan E. Freedman, Chief Deputy
Department of Public Health

APPROVED AS TO FORM:
BY THE OFFICE OF THE COUNTY COUNSEL
RAYMOND G. FORTNER, JR.
COUNTY COUNSEL

By_____
Deputy