

V. Appendices

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CALIFORNIA'S TOBACCO CONTROL PROGRAM

The scope of the health education campaign launched by the California Department of Public Health, Tobacco Control Section (CDPH/TCS), is addressed in the Health and Safety (H&S) Code, Part 3, Chapter 1, commencing with Section 104350. These statutes authorize CDPH/TCS to fund a variety of innovative approaches to reduce tobacco use. These approaches include funding for local programs, including: 1) county and city health departments; 2) competitively selected community agencies through a competitive grant program; 3) statewide projects; 4) a statewide media campaign; and 5) an extensive evaluation of the entire Tobacco Control Program. The following is a description of key projects funded by CDPH/TCS, as of December 2004:

A. Local Programs

The local programs component provides training and technical assistance to the field, promotes advocacy campaigns and policy development, assists with educational materials development, and coordinates statewide campaigns such as Project SMART (Sponsorship Mission: Avoid Reliance on Tobacco) Money, the Strategic Tobacco Retail Effort (STORE) Campaign, and the Live, Work, and Play Campaign.

For additional information about local projects, review the CDPH/TCS funded project lists at <http://www.dhs.ca.gov/tobacco/html/RequestForApplications.htm>, RFA TCS 05-102, Supplemental Materials.

Four groups comprise Local Programs:

Local Health Departments: Each of the 58 county and 3 city health departments are designated as Local Lead Agencies (LLAs). As the lead tobacco control agency at the community level, the LLA is responsible for coordinating information, referral, outreach, and education activities within its respective health jurisdiction. In general, the LLA is the lead on local community policy development, facilitation of enforcement of tobacco control laws, and local provision of tobacco cessation services.

Competitive Grantees: The competitive grant program funds a variety of community, statewide, and pilot projects. The agencies funded through this program are nonprofit agencies and may include community-based organizations, voluntary health organizations, health clinics, ethnic organizations, labor organizations, and youth organizations. Approximately 60 projects are currently funded.

Partnerships for Priority Populations: Seven nonprofit organizations are funded through the California Partnerships for Priority Populations program to provide a

variety of population-specific, tobacco-control services and advocacy campaigns statewide. These include: African American; American Indian; Asian-American and Pacific Islander; Hispanic/Latino; Lesbian, Gay, Bisexual, and Transgender (LGBT); Low Socio-economic Status (SES); and Labor.

Statewide Grants: CDPH/TCS funds several grants that are designed to have a statewide impact, by providing technical assistance and/or services throughout California. Statewide grants offering assistance to the CDPH/TCS-funded projects include:

- **California Clean Air Project (CCAP)** provides statewide secondhand smoke (SHS) specific technical assistance, training, and educational materials to assist in the creation and implementation of policies to protect all workers, the public, and tenants from the toxic effects of exposure to SHS. Their website is <http://www.ccap.etr.org/>.
- **California Smokers' Helpline (Helpline)** provides intensive tobacco cessation counseling in English, Spanish, Korean, Mandarin, Cantonese, Vietnamese as well as for the hearing impaired. Tailored counseling services are provided for adults, teens, pregnant women, and chew tobacco users. The Helpline also provides self-help materials and a referral list to other tobacco cessation programs. The services provided by the Helpline are free-of-charge. Their website is <http://www.californiasmokershelpline.org/>.
- **California Youth Advocacy Network (CYAN)** provides technical assistance to support advocacy in tobacco use prevention and cessation to youth and young adults, including college and vocational students, and active military personnel. Their website is <http://www.cyanonline.org>.
- **Capacity Building Network (CBN)** provides training and technical assistance services to enhance and improve the ability of TCS funded agencies to engage, work with, conduct and evaluate culturally appropriate and competent evidence-based tobacco control interventions addressing 8 identified priority populations; 1) African American (AA); 2) American Indian/Alaska Native (AI/AN); 3) Asian and Pacific Islander (API); 4) Hispanic/Latino (H/L); 5) Lesbian, Gay, Bisexual, and Transgender (LGBT); 6) Low Socio-Economic Status (Low SES); 7) Blue and Pink Collar Workers; and, 8) Rural Residents.
- **The Center for Tobacco Policy and Organizing (The Center)** provides long and short-term technical assistance on policy and enforcement campaigns, research, and updates on tobacco control bills and legislation, as well as community organizing trainings. Their website is <http://www.californialung.org/thecenter>.

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Appendix 1

- **The Center for Tobacco Cessation Training and Technical Assistance** will be a newly funded CDPH/TCS program that will provide training and technical assistance on a diverse range of age, ethnic, lifestyle, and language specific services for CDPH/TCS and Proposition 10-funded projects, as well as voluntary health organizations and health care providers.
- **Council for Responsible Public Investment (CRPI)** mobilizes college students to divest of their schools' pension funds' tobacco stocks by challenging the tobacco industry's global harm to public health, workers and the environment. It also encourages state and local governments to discontinue investing public monies in tobacco companies by providing technical assistance to policymakers, communities, unions, foundations, and organizations. Their website is <http://www.BigTobaccoSucks.org>.
- **The Technical Assistance Legal Center (TALC)** provides technical assistance on legal issues in drafting, passing and enforcing tobacco control policies including tobacco retailer licensing, SHS, self-service display bans, enforcement of tobacco control laws, zoning restriction on tobacco retailers, event sponsorship by the tobacco industry, Master Settlement Agreement, and other issues upon request. Their website is <http://www.phi.org/talc>.
- **The Tobacco Education Clearinghouse of California (TECC)** provides a broad array of professional resources and support services including a complete sales catalog of low/no cost tobacco education materials, professional research assistance, a library of over 20,000 tobacco-related materials, and material development assistance. Their website can be reached through PARTNERS or at <http://www.tecc.org>.
- **The Tobacco Control (TC) Evaluation Center** provides training and technical assistance with identifying or developing LLA and competitive grant evaluation tools, materials, and plans, as well as assistance with the dissemination of evaluation information. Their website is <http://tobaccoeval.ucdavis.edu/>.

B. Statewide Media Campaign

The statewide Tobacco Control Media Campaign (TCMC) consists of a Tobacco Control Advertising Campaign (TCAC) and a Tobacco Control Public Relations Campaign (TCPRC). Both include linguistically and culturally relevant ethnic-specific campaigns. TCMC utilizes thought-provoking messages to effectively communicate the dangers of tobacco use, the impact of SHS, and the tobacco industry's marketing ploys. TCPRC includes communications planning and implementation, media relations and advocacy, technical assistance to local programs, grassroots coalition building, promotional event development, news conference coordination, media alerts and press releases, and media monitoring.

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Appendix 1

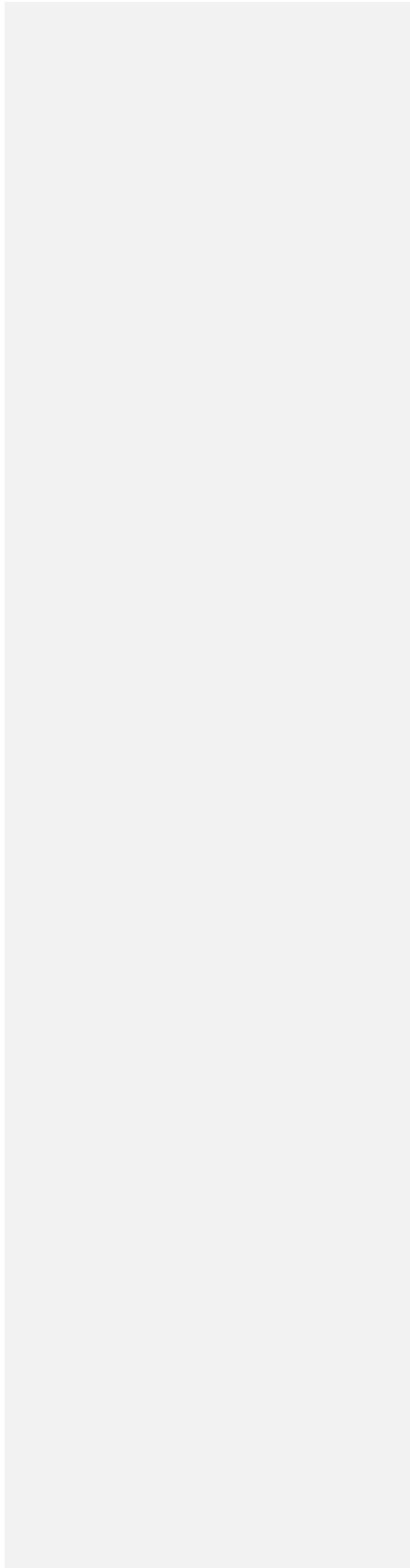
The advertising and public relations components work synergistically to deliver clear, powerful messages, with the greatest reach and frequency possible.

C. Evaluation

The CDPH/TCS tracks and evaluates adult and youth tobacco knowledge, attitudes, and behavior through telephone and in-school surveys. Other activities include monitoring tobacco industry events, retail environment, law enforcement officials, and illegal sales to minors. These surveys are used to target education and media outreach. Additionally, both in-house and independent evaluations of all tobacco control components are conducted to monitor progress toward reaching program goals and objectives, and to determine which strategies are most effective in reducing tobacco use. Evaluation data is incorporated into the advertising and program strategies.

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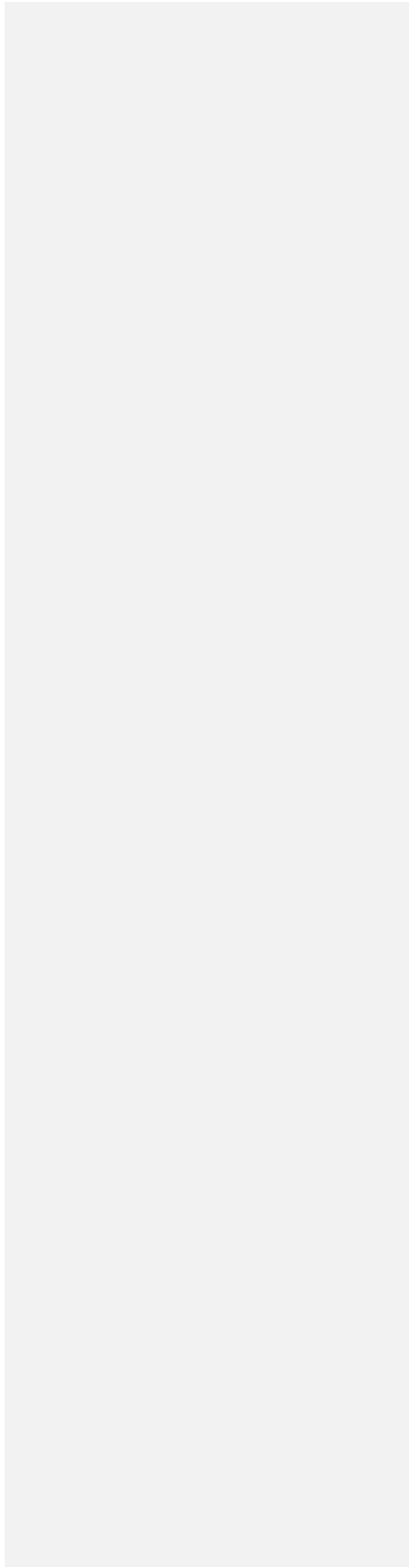
Appendix 2



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Appendix 3

Insert 2004-2007 LLA Funding Allocation Table



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Appendix 4

AMERICAN INDIAN CASINOS BY COUNTY

COUNTY	ESTABLISHMENT	CITY	ZIP
Amador	Jackson Rancheria's Resort & Casino	Jackson	95642
Butte	Feather Falls Casino	Oroville	95966
	Gold Country Casino	Oroville	95966
Colusa	Colusa Casino & Bingo	Colusa	95932
Contra Costa	San Pablo Lytton Casino	San Pablo	94806
Del Norte	Elk Valley Casino	Crescent City	95531
	Lucky 7 Casino	Smith river	95567
Fresno	Mono Wind Casino	Auberry	93602
	Table Mountain Casino & Bingo	Friant	93626
Humboldt	Cher-Ae Heights Casino	Trinidad	95570
	Blue Lake Casino	Coachella	92236
	Lucky Bear Casino	Hoopa	95546
Imperial	Quechan Paradise Casino	Winter Haven	92283
Inyo	Paiute Palace Casino	Bishop	93514
Kings	Palace Indian Gaming Center	Lemoore	93245
Lake	Robinson Rancheria	Nice	95464
	Konocti Vista Casino & Bingo	Lakeport	95453
Lassen	Diamond Mountain Casino	Susanville	96130
Madera	Chukchansi Gold Resort	Coarsegold	93614
Mendocino	Black Bart Casino	Willits	92539
	Hopland Sho-Ka-Wah Casino & Bingo	Hopland	95499
	Red Fox Casino	Laytonville	95454
	Coyote Valley Shodakai	Redwood Valley	95418
Modoc	Alturas Casino	Alturas	96101
	Desert Rose Casino	Alturas	96101
Placer	Thunder Valley Casino	Lincoln	95648
Riverside	Spa Hotel & Casino	Palm Springs	92262
	Soboba Legends Casino	San Jacinto	92581
	Agua Caliente Casino	Rancho Mirage	92270
	Pechanga Gaming Center	Temecula	92592
	Spotlight 29 Casino	Coachella	92236
	Morongo Casino Resort Spa	Cabazon	92230
	Cahuilla Creek Casino	Anza	92539
	Augustine Casino	West Coachella	92236
	Fantasy Springs Casino	Indio	92203
San Bernardino	Havasus Landing Resort	Havasus lake	92363
	San Manuel Indian Casino	Highland	92346
San Diego	Barona Casino	Lakeside	92040
	Pala Casino	Pala	92059
	Golden Acorn Casino	Campo	91906
	La Jolla Indian Slot Arcade	Valley Center	92082
	Viejas Casino and Turf	Alpine	91901
	Sycuan Indian Gaming	El Cajon	92019
	Harras's Rincon Casino & Resort	Valley Center	92082
	Casino Pauma	Pauma Valley	92061
Santa Barbara	Chumash Casino	Santa Ynez	93460
Shasta	Pit River Casino	Burney	96013
Sonoma	River Rock Casino	Geyserville	95441
Tehama	Rolling Hills Casino	Orland	96021
Tulare	Eagle Mountain Casino	Porterville	93258
Tuolumne	Chicken Ranch Casino	Jamestown	95327
	Black Oak Casino	Tuolumne	93614
Yolo	Cache Creek Casino	Brooks	95606



OTIS California Department of Health Services, Tobacco Control Section
 Online Tobacco Information System

Local Lead Agency FY 04-07: Test County Department of Public Health LLA

[Main](#) | [Plan](#) | [Progress](#) | [Cost](#) | [Directory](#) | [Materials](#) | [Communications](#) | [Reports](#)

Materials Development and TECC Intake

Working Title of Material:

Brief Description of the Content Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed diam nonummy nibh euismod tincidunt ut laoreet dolore magna aliquam erat volutpat. Ut wisi enim ad minim veniam, quis nostrud exerci tation ullamcorper suscipit lobortis nisl ut aliquip ex ea commodo consequat. Duis autem vel eum iriure dolor in hendrerit in vulputate velit esse molestie consequat, vel illum dolore eu feugiat nulla facilisis at vero eros et accumsan et justo odio dignissim qui blandit praesent luptatum zzril delenit augue duiis dolore te feugiat nulla facilisi. Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed diam nonummy nibh euismod tincidunt ut laoreet dolore magna aliquam erat volutpat. Ut wisi enim ad minim veniam, quis nostrud exerci tation ullamcorper suscipit lobortis nisl ut aliquip ex ea commodo consequat

Target Audience to be Reached by the Material: **Audience Groups**

- 0-12 years
- 13-17 years
- 18-24 years -specifically
- 21 years and older
- Adults 18 years and older
- Advocates

General Population Groups

- African
- African American/Black
- American Indian/Native American
- Asian
- Eastern European
- Hispanic/Latino

Specific Ethnic Population Groups

- Afghan
- Arabic
- Armenian
- Asian Indian
- Bosnian
- Cambodian

Material Format: Fact Sheet

Language:

- Afrikaans
- American Sign Language
- Amharic
- Arabic
- Armenian
- Cambodian

Projected Completion Date: 07/05-12/05

Primary Content: Secondhand Smoke

Material Purpose:

- Raise awareness of issue
- Influence attitudes about issue
- Influence behavior change
- Other:

Progress

Contact Name:

Contact Phone Number:

Contact Email:

Date Completed: [\[Choose Date\]](#)

Date Sent to TECC: [\[Choose Date\]](#)

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Appendix 5

Design Steps		
Step	Completed	Date Documentation Sent
1 Outlined material goals and objectives	<input type="radio"/> Yes <input type="radio"/> No	<input type="text"/> [Choose Date]
2 Completed search for similar existing material	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> N/A <input type="text"/> [Choose Date]
3 Sought consultation on design, (i.e., graphic artist)	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> N/A <input type="text"/> [Choose Date]
4 Pilot tested concepts with target audience	<input type="radio"/> Yes <input type="radio"/> No	<input type="text"/> [Choose Date]
5 Conducted readability/literacy test	<input type="radio"/> Yes <input type="radio"/> No	<input type="text"/> [Choose Date]
6 Tested material for cultural appropriateness	<input type="radio"/> Yes <input type="radio"/> No	<input type="text"/> [Choose Date]
7 Completed an external back translation of non-English material (Submit English translation)	<input type="radio"/> Yes <input type="radio"/> No	<input type="text"/> [Choose Date]
8 Field tested final material with target audience	<input type="radio"/> Yes <input type="radio"/> No	<input type="text"/> [Choose Date]
9 Conducted evaluation of material with target audience for effectiveness	<input type="radio"/> Yes <input type="radio"/> No	<input type="text"/> [Choose Date]
10 Submitted two hardcopies of the original material developed to TECC	<input type="radio"/> Yes <input type="radio"/> No	<input type="text"/> [Choose Date]
11 Sent a copy of the field test results and/or focus group analyses to TECC	<input type="radio"/> Yes <input type="radio"/> No	<input type="text"/> [Choose Date]
12 Obtained copyright releases from graphic artist/contractors	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> N/A <input type="text"/> [Choose Date]
13 Obtained model releases for any people in photos	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> N/A <input type="text"/> [Choose Date]
14 Obtained any image releases/contracts used for any purchased stock photography	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> N/A <input type="text"/> [Choose Date]
15 Sent a completed Material Intake Form Report to TECC	<input type="radio"/> Yes <input type="radio"/> No	<input type="text"/> [Choose Date]

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16 Sent all digital source files for materials created (e.g., Photoshop, Work, Illustrator, PageMaker, Quark, etc.) and video/audio masters to TCS with the final progress report Yes No [Choose Date]

Copyright and Distribution Logistics

Is the material part of a comprehensive campaign or program? Yes No

Are there any copyright or talent limitations associated with this material? Yes No

Format of production quality Master:

Material Development Cost: \$

Material Duplication Cost: \$

Number of copies duplicated:

Number of copies distributed:

Abstract of Final Produced Material

Print and submit the completed Materials Development and TECC Intake Report to TECC along with the two original copies of the completed materials and materials development documentation to TECC

**LOCAL LEAD AGENCY
ALLOCATION AGREEMENT TERMS**

Exhibit A Scope of Work

1. Services
2. Communications/Project Director
3. Progress Reports, Evaluation Instruments, Other Requirements
4. Project Monitoring

Exhibit B Budget Detail and Payment Provisions

1. Term of the Agreement
2. Invoicing and Payment
3. Funding or Funding Reduction in Subsequent Fiscal Years
4. Prompt Payment Clause
5. Amount Payable
6. Overtime
7. Payment for Performance of Deliverables
8. Trust Account and Expenditure Provisions
9. Recovery of Overpayments
10. Generated Revenues
11. Interest Earned

Exhibit C Additional Provisions

1. Additional Incorporated Exhibits
2. Agreement Alterations
3. Termination
4. Avoidance of a Conflict of Interest by the LLA
5. Acknowledgement of State Participation and Helpline Reference
6. Subcontractor Requirements
7. Lobbying and Political Activities
8. Confidentiality of Information
9. Elected Officials
10. Child Support Compliance Act Acknowledgement

Exhibit D(S) Special Terms and Conditions (*only the provisions listed below apply*)

5. Income Restrictions
6. Audit and Record Retention
7. Site Inspection
8. Intellectual Property Rights
10. Confidentiality of Information
11. Documents, Publications and Written Reports
12. Dispute Resolution Process
14. Novation Requirements
16. Performance Evaluation
17. Officials Not to Benefit
18. Four-Digit Date Compliance

**Exhibit A
Scope of Work**

1. Services

- A. The Local Lead Agency (LLA) shall provide tobacco education services and deliverables in accordance with its Comprehensive Tobacco Control Plan (CTCP), including any revisions submitted to and approved by the California Department of Public Health (CDPH), Tobacco Control Section (TCS) pursuant to Health and Safety Code Section 104350. The CTCP shall be submitted in accordance to the form and format determined by the CDPH/TCS. The LLA agrees to expend funds received through this agreement in accordance with the approved budget and budget justification contained in the approved CTCP. The LLA also agrees that the allocation of funds pursuant to this agreement is contingent upon the CDPH/TCS' approval of the CTCP and any revisions thereto. No funds shall be allocated under Provision 5.A. of Exhibit B, in any given fiscal year unless a revised CTCP has been approved by the CDPH/TCS for that fiscal year.
- B. Revisions to the CTCP must be approved by the CDPH/TCS. The CDPH/TCS shall notify the LLA in writing of the effective date of such approvals.
- C. The CDPH/TCS shall work with the LLA to ensure that the CTCP is being performed pursuant to this agreement, and reserves the right to approve and adjust specific tasks to be performed within the CTCP to be performed by the LLA. These changes shall be accomplished by written notification to the LLA.

2. Communications/Project Director

A. Communications

The LLA shall send prospective payment invoices, progress reports, cost reports, and other communication to:

California Department of Public Health
CDIC/Tobacco Control Section
Mail Station 7206
P. O. Box 997377
Sacramento, CA 95899-7377

B. Project Director

The LLA shall designate a Project Director, subject to approval by the CDPH/TCS. The Project Director is responsible for assuring that the

Exhibit A
Scope of Work

terms and conditions of the agreement are met. The LLA shall notify the CDPH/TCS in a form and format prescribed by the CDPH/TCS within five (5) days of a change in the Project Director.

3. Progress Reports, Evaluation Instruments, Other Requirements

- A. The LLA agrees to submit semi-annual progress and cost reports. The cost reports will specify actual expenditures for tobacco education services provided by the LLA. The progress and cost reports shall be submitted in a form, format, and schedule prescribed by the CDPH/TCS. The LLA agrees that subsequent quarterly prospective payments shall be contingent upon the CDPH/TCS' receipt and approval of progress and cost reports. The LLA agrees that if the CDPH/TCS determines that all or a portion of the allocated funds have been expended inappropriately during the period covered by the progress or cost report, in accordance with the services identified in the LLA's approved the CTCP, the CDPH/TCS may offset the value of the inappropriate expenditures against current and/or future quarterly prospective payments. The LLA agrees that such deductions to sums due to the LLA are offsets and no further amount shall be due to the LLA.
- B. The LLA shall complete the CDPH/TCS standardized evaluation instruments, needs assessment instruments, and other evaluation requirements in a form and format prescribed by the CDPH/TCS.
- C. The LLA shall comply with the LLA Administrative and Policy Manual and all the CDPH/TCS-issued program and policy letters which may be issued during the term of the agreement provided that the CDPH/TCS shall only make changes or impose additional requirements which will not result in additional cost to the LLA.
- D. The LLA shall coordinate and collaborate with the CDPH/TCS or its designee to maximize the tobacco education media/communication efforts, as directed by the CDPH/TCS.

4. Project Monitoring

- A. The CDPH/TCS and all authorized State control agencies shall have access to all internal and external reports, records, and documents used by the LLA in the operation and administration of this agreement.

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**Exhibit A
Scope of Work**

- B. The LLA shall cooperate, and require its subcontractors to cooperate, with the CDPH/TCS or its designee by participating in meetings and/or site visits as the CDPH/TCS may deem necessary to monitor LLA compliance with the agreement.

**Exhibit B
Budget Detail and Payment Provisions**

1. Term of the Agreement

The term of this agreement shall be from July 1, 2007 to June 30, 2010.

2. Invoicing and Payment

A. The CDPH/TCS shall make quarterly prospective payments to the LLA to provide services and deliverables pursuant to Exhibit A, paragraph 1.A.

B. The CDPH/TCS will provide the quarterly prospective payment invoice to the LLA. The LLA is to sign the invoice and submit to:

California Department of Public Health
CDIC/Tobacco Control Section
MS 7206
P.O. Box 997377
Sacramento, CA 95899-7377

C. Invoices submitted by the LLA and paid by the CDPH/TCS, shall not be deemed evidence of allowable agreement costs. Costs and/or expenses deemed unallowable are subject to provision 9 entitled, "Recovery of Overpayments" that appears in this exhibit.

D. The CDPH/TCS total reimbursement via cost reports for each line item identified in the budget is the maximum amount reimbursable for that line item during the agreement term. The CDPH/TCS, at its option, may return disputed cost reports to the LLA for correction and resubmission or the CDPH/TCS may disallow expenses claimed which are not in accordance with the SOW, the budget or which cannot be verified as project expenses by the LLA.

3. Funding or Funding Reduction in Subsequent Fiscal Years

A. Funds are presently not available for performance under this agreement beyond June 30, 2008. The CDPH/TCS' obligation for performance of this agreement beyond that date is contingent upon the availability of appropriated funds by the Legislature from which payment for this agreement can be made. No legal liability on the part of the CDPH/TCS for any payment may arise for performance under this agreement beyond June 30, 2008 until funds are made available to the CDPH/TCS for performance and until the LLA receives notice of availability, to be confirmed in writing by the CDPH/TCS.

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**Exhibit B
Budget Detail and Payment Provisions**

- B. If funding for any fiscal year is reduced or deleted by the Legislature or the Department of Finance for purposes of this program, the CDPH/TCS shall have the option to either:
- 1) Terminate this agreement pursuant to provision 3 of Exhibit C, the 30-day termination clause.
 - 2) Offer a revision to the LLA to reflect the reduced funding for this agreement.
- C. If statutory authority for programs funded under Health and Safety Code Section 104350 expires, or this agreement is terminated, the unexpended agreement funds and accumulated interest pursuant to provision 11 of this exhibit shall be identified in a manner prescribed by the CDPH/TCS and returned to the CDPH/TCS within ninety (90) days of the expiration date to the address specified in provision 2.B of this exhibit. The words "Unexpended Tobacco Control Program Funds" and the agreement number shall be written on the face of the check or warrant that the LLA has issued to return unexpended funds.

4. 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.

5. Amount Payable

- A. The maximum amount to be allocated under this agreement is reflected in the CDPH/TCS 2007-2010 LLA Allocation Table, Appendix 2, of the Comprehensive Tobacco Control Plan Guidelines.
- B. Funds allocated from each fiscal year may be expended or encumbered without regard to fiscal year pursuant to each year's budget authority.
- C. Any requirement of performance by the CDPH/TCS and the LLA for the period subsequent to June 30, 2008 will be dependent upon the availability of future appropriations.

6. Overtime

Overtime is not reimbursable under the terms of this agreement unless the LLA has provided for overtime expenses in the approved budget of the CTCP.

Exhibit B
Budget Detail and Payment Provisions

7. Payment for Performance of Deliverables

The LLA understands and agrees that all deliverables as specified in this agreement must be completely performed in order to receive the maximum amount payable identified in Appendix 2 of the CTCP Guidelines. The LLA agrees that if the CDPH/TCS determines that any deliverable is not performed, only partially performed, or not completely performed, the CDPH/TCS may reduce the maximum amount payable under this agreement as follows:

A. Where a deliverable is not performed:

The CDPH/TCS shall calculate the pro rata share of the non-performed deliverable by utilizing the relative values specified in the SOW of the CTCP for each deliverable and reduce the maximum amount payable by deducting the relative value of the deliverable from any sum due the LLA to the degree that the sum due the LLA meets or exceeds the reduction. If the reduction exceeds the sum due the LLA, the LLA shall pay such amount back to the CDPH/TCS upon its demand. The LLA agrees that such deductions to sums due to the LLA are offsets and no further amount shall be due to the LLA.

B. Where a deliverable is only partially performed:

The CDPH/TCS shall ascertain what percentage of the deliverable was only partially performed, calculate the pro rata share of the partially performed portion by utilizing the relative values specified in the SOW of the CTCP for each deliverable and reduce the maximum amount payable by deducting the relative value of the partially performed deliverable from any sum due the LLA to the degree that the sum due the LLA meets or exceeds the reduction. If the reduction exceeds the sum due the LLA, the LLA shall pay such amount back to the CDPH/TCS upon demand. The LLA agrees that such deductions to sums due to the LLA are offsets and no further amount shall be due to the LLA.

C. Where a deliverable is not completely performed:

The CDPH/TCS shall ascertain what percentage of the deliverable was not performed at a level of completeness, calculate the pro rata share of that portion by utilizing the relative values specified in the SOW of the CTCP for each deliverable and reduce the maximum amount payable by deducting the relative value of that portion from any sum due the LLA to the degree that the sum due the LLA meets or exceeds the reduction. If the reduction exceeds the sum due the LLA, the LLA shall pay such

**Exhibit B
Budget Detail and Payment Provisions**

amount back to the CDPH/TCS upon demand. The LLA agrees that such deductions to sums due to the LLA are offsets and no further amount shall be due to the LLA.

8. Trust Account and Expenditure Provisions

- A. The annual allocation to the LLA and revenues generated from the Tobacco Control Program funds shall be deposited into an interest-bearing, insured trust account.
- B. The annual allocation, interest earned on the allocation funds, and any revenues generated from the Tobacco Control Program funds shall be retained in the LLA's Tobacco Control Program trust account and shall be spent only to accomplish the goals and objectives outlined and identified in the approved CTCP. The LLA shall not divert these funds to cover costs or expenses not specifically included in the CTCP.
- C. The LLA shall not divert, freeze, restrict, or prevent the use of these funds, in whole or in part, for purposes other than conducting the activities described in the approved CTCP.

9. Recovery of Overpayments

- A. LLA agrees that cost reports based upon a contractual agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by the CDPH/TCS by one of the following options:
 - 1) LLA's remittance to the CDPH/TCS of the full amount of the audit exception within 30 days following the CDPH/TCS' request for repayment;
 - 2) A repayment schedule which is agreeable to both the CDPH/TCS and the LLA.
- B. The CDPH/TCS reserves the right to select which option will be employed and the LLA will be notified by the CDPH/TCS in writing of the claim procedure to be utilized.
- C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the LLA, beginning 30 days after LLA's receipt of the CDPH/TCS' demand for payment.

**Exhibit B
Budget Detail and Payment Provisions**

- D. If the LLA 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 LLA loses the final administrative appeal, LLA shall repay, to the CDPH, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues from the LLA's first receipt of the CDPH/TCS' notice requesting reimbursement of questioned audit costs or disallowed expenses.

10. Generated Revenues

- A. The LLA shall obtain the CDPH/TCS' prior approval to generate revenue and place any revenue generated by activities conducted under this agreement, accruing to or received by the LLA, into the LLA's trust account. Revenue generated by the LLA as a result of this agreement shall be used only to meet the goals and objectives identified in the LLA's approved the CTCP, to defray costs incurred by the program, to measurably expand the program, or to improve the quality of services above the level of services already funded under this agreement.
- B. The LLA shall maintain adequate documentation of the receipt and use of such revenues, and shall provide this documentation to the CDPH/TCS in the required biannual Cost Reports. The LLA agrees to return to the CDPH/TCS any unexpended funds, including interest earned, remaining in the generated revenue account, if funding authority for this program expires, or the agreement is terminated, to the address specified in provision 2.B above, within ninety (90) days from the expiration date.
- C. The words "Unexpended Tobacco Control Program Generated Revenue" and the agreement number shall be written on the face of the check or warrant that the LLA has issued to return unexpended generated revenue.

11. Interest Earned

- A. Interest accruing from prospective payments shall be utilized by the LLA for activities approved by the CDPH/TCS and shall be used only to meet the goals and objectives identified in the LLA's approved CTCP, to defray costs incurred by the program, to measurably expand the program, or to improve the quality of services above the level of services already funded under this agreement.
- B. The LLA shall maintain adequate documentation of the receipt and use of such interest, and shall provide this documentation to the CDPH/TCS in the biannual Cost Reports. The LLA agrees to return to the CDPH/TCS any unexpended interest remaining in the account, if funding authority for

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**Exhibit B
Budget Detail and Payment Provisions**

this program expires, or the agreement is terminated, to the address specified in provision 2.b above, within ninety (90) days from the expiration date.

- C. *The words “Unexpended Tobacco Control Program Interest” and the agreement number shall be written on the face of the check or warrant that the LLA has issued to return unexpended interest.*

**Exhibit C
Additional Provisions**

1. Additional Incorporated Exhibits

- A. The attached Exhibit D(S) entitled "Special Terms and Conditions," consisting of eighteen (18) pages, is incorporated and made a part of this agreement by this reference, except for provisions 1, 2, 3, 4, 9, 13, 15, **19 and 20, ~~21, and 22~~**. The term contractor shall mean Local Lead Agency.
- B. *The Local Lead Agency Administrative and Policy Manual* and any subsequent updates are incorporated herein and made a part of this agreement by this reference. This manual will be updated periodically. The CDPH/TCS shall provide the LLA with a copy of the *Local Lead Agency Administrative and Policy Manual* and periodic updates thereto.

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2. Agreement Alterations

No alteration or variation of the terms of this agreement shall be valid unless made in writing by Program Letter, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto. This does not prohibit the parties from agreeing in writing to revisions in the LLA's CTCP, providing such revisions are made in accordance with the requirements prescribed by the CDPH/TCS.

3. Termination

A. Termination for Convenience

The CDPH/TCS retains the option to terminate this agreement without cause at the CDPH/TCS' convenience, provided that written notice has been delivered to the LLA at least thirty (30) days prior to such termination date. If the CDPH/TCS terminates this agreement at its convenience, the LLA will be entitled to compensation upon submission of a cost report and proper proof of claim, in that proportion which its services and products were satisfactorily rendered or provided and its expenses necessarily incurred pursuant to this agreement, up to the date when notice of termination is received by the LLA (hereinafter referred to as "the notice date"). In the event of termination, at the request of the CDPH/TCS, the LLA shall furnish copies of all proposals, specifications, designs, procedures, layouts, copy, and other materials related to the services or deliverables provided under this agreement, whether finished or in progress on the termination date. The LLA will not be entitled to reimbursement for any expenses incurred for services and deliverables pursuant to the agreement after the notice date, unless the LLA receives written advance approval from the CDPH/TCS. Any services or

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Appendix 6

**Exhibit C
Additional Provisions**

deliverables for which the LLA is paid which are provided according to the procedures in this paragraph shall become the property of the CDPH/TCS.

B. Immediate Termination for Cause

The CDPH/TCS reserves the right to immediately terminate this agreement in whole or in part by providing written notice to the LLA after the occurrence of any of the following:

- 1) If the LLA knowingly furnishes any statement, representation, warranty, or certification in connection with the CTCP, which representation is materially false, deceptive, incorrect, or incomplete;
- 2) If the LLA fails to perform to the CDPH/TCS' satisfaction any material requirement of the agreement or defaults in performance of the agreement;
- 3) If the CDPH/TCS determines satisfactory performance of the agreement is substantially endangered by the action or inaction by the LLA, or can reasonably anticipate such occurrence of default;
- 4) If the LLA files for bankruptcy or, if in the judgment of the CDPH/TCS, the LLA becomes financially incapable of completing the agreement; or
- 5) The CDPH/TCS may, at its discretion, require the LLA to cease performance of certain components of the CTCP and complete performance of other components prior to termination of the entire agreement.

C. Responsibilities Upon Termination

After receipt of notification of termination of this agreement, and except as otherwise specified by the CDPH/TCS, the LLA shall stop work under this agreement on the date specified in the written notice of termination. The LLA shall:

- 1) Place no further order or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this agreement that is not terminated;
- 2) Assign to the CDPH/TCS, effective on the date of termination, in the manner, and to the extent specified by the CDPH/TCS all of the

**Exhibit C
Additional Provisions**

rights, titles, and interests for the LLA under the orders and subcontracts terminated. In the case of said assignment, the CDPH/TCS has the right, at its discretion, to settle or reimburse the LLA for payment of any or all claims arising out of the termination of such orders and subcontracts and reduce any settlement amount determined by the amount reimbursed to the LLA for payment of such orders or subcontracts;

- 3) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the CDPH/TCS to the extent the CDPH/TCS may require. The CDPH/TCS' approval or ratification shall be final for the purposes of this section.
- 4) Upon the effective date of termination of the agreement and the payment by the CDPH/TCS of all items properly chargeable to the CDPH/TCS hereunder, LLA shall transfer, assign, and make available to the CDPH/TCS all materials belonging to the CDPH/TCS, all rights and claims to any and all reservations, contracts, and arrangements with owners of media/PR materials, or others, and shall make available to the CDPH/TCS all written information regarding the CDPH/TCS' media/PR materials, and no extra compensation is to be paid to LLA for its services in connection with any such transfer or assignment;
- 5) Take such action as may be necessary, or as the CDPH/TCS may specify, to protect and preserve any property related to this agreement which is in the possession of the LLA and in which the CDPH/TCS has or may acquire an interest.

4. Avoidance of a Conflict of Interest by the LLA

- A. The LLA agrees it will take all reasonable efforts to ensure that no conflict of interest exists between its officers, agents and employees.
- B. The LLA, its agents, officers, and employees shall not use their position to influence a government decision in which he or she knows, or has reason to know, he or she has a financial interest, such as for private gain for themselves or others with whom they have family, business, or other ties.
- C. In the event the CDPH/TCS determines that a conflict of interest situation exists, any increase in cost(s) associated with the conflict of interest may be disallowed. This provision shall not be construed to prohibit the employment of persons with whom officers, agents, and employees have

**Exhibit C
Additional Provisions**

family, business or other ties so long as the employment of such persons does not result in increased costs over those associated with employment of any other qualified applicant on a merit basis.

5. Acknowledgment of State Participation and Helpline Reference

- A. The LLA shall acknowledge the financial support of State funds whenever any findings, data, and materials developed pursuant to this agreement are published or whenever the LLA creates a product (e.g., brochure, a film, videotape, manual, book, pamphlet, training guide, poster, curriculum, etc.) pursuant to this agreement, in the following manner: "This _____ was made possible by funds received from the California Department of Public Health, under Agreement Number _____."
- B. Informational materials including, but not limited to, brochures, pamphlets, posters, curriculum, training guides, etc., that are developed under this agreement, shall include the California Smokers Helpline toll-free telephone number unless granted an exemption from such requirement by the State.

6. Subcontractor Requirements

- A. As used in this agreement, the term "subcontractor" means any individual or entity that enters into any subcontract with the LLA for performance of any part of this agreement.
- B. The LLA agrees that it is responsible for the performance of all requirements under this agreement even if such performance is carried out by a subcontractor.
- C. For subcontracts (i.e., written agreement between the LLA and a subcontractor), CDPH/TCS elects to waive the right of prior review and written approval.
- D. The LLA agrees that all subcontract agreements entered into for performance under this agreement shall be in writing and shall include a provision requiring the subcontractor to comply with the terms and conditions of the LLA's policy and procedure regarding procurement of services performed through a subcontract.
- E. The subcontract documentation is to be retained by the LLA and the CDPH/TCS retains the right to request subcontract documentation and any other records or files regarding subcontract and consultant services.

**Exhibit C
Additional Provisions**

- F. The CDPH/TCS assumes no responsibility for the payment of subcontractors used in the performance of the agreement. LLA accepts sole responsibility for the payment of subcontractors used in the performance of this agreement.
- G. The LLA shall notify the CDPH/TCS, in the form and format prescribed by the CDPH/TCS, when the LLA enters into a new subcontract or consultant agreement or terminates or replaces a subcontract or consultant agreement.

7. Lobbying and Political Activities

- A. The LLA shall not use agreement funds for direct or indirect lobbying.
 - 1) Direct lobbying, for the purposes of this agreement is defined as any explicit attempt to promote a yes or no vote on a specific piece of legislation, local ordinance or ballot measure through any oral, written or other form of communication with any member or employee of a legislative body, or any government official or employee who participates in the formulation of, or decision-making regarding that specific piece of legislation, local ordinance or ballot measure.
 - 2) Indirect lobbying, for the purposes of this agreement, is defined as any oral or written communication to the general public or any segment of the general population which explicitly attempts to promote a yes or no vote on a specific piece of legislation, local ordinance or ballot measure by encouraging the recipients of the communication to attempt to influence a legislator or an employee of a legislative body or any other government official or employee who participates in the formulation of, or decision-making regarding that legislation, local ordinance or ballot measure.
- B. The LLA shall not use agreement funds to promote a yes or no vote on a ballot measure.
- C. The LLA shall not use agreement funds to promote, directly or indirectly, any candidate for an elective public office.

8. Confidentiality of Information

The provisions of paragraph 10, Confidentiality of Information, in Exhibit D(S), "Special Terms and Conditions," are supplemented by the following paragraphs:

**Exhibit C
Additional Provisions**

- A. All financial, statistical, personal, technical, and other data and information relating to the CDPH/TCS operations which are designated confidential by the CDPH/TCS or developed by the LLA and deemed confidential by the CDPH/TCS, shall be protected by the LLA from unauthorized use and disclosure. If the methods and procedures employed by the LLA for the protection of the LLA's data and information are deemed by the CDPH/TCS to be adequate for the protection of the confidential information, such methods and procedures may be used to carry out the intent of this paragraph. If the methods and procedures employed by the LLA are deemed by the CDPH/TCS to be inadequate, the CDPH/TCS, in cooperation with the LLA, will specify the procedures to be followed.
- B. The LLA and all subcontractors shall immediately notify the Program Contract Manager of any request from a third party for disclosure of any information relating to this agreement, including, but not limited to, subpoena, deposition proceedings, court order or other legal action. Unless the Program Contract Manager authorizes the disclosure of the information in writing, the LLA and all subcontractors shall use every means, to the maximum extent permitted by law and at no cost to the CDPH/TCS, to protect the information from disclosure.

9. Elected Officials

No funds, pursuant to this agreement, shall be used to feature in any manner the image or voice of any elected public official or candidate for elected office, or directly present the views of any elected public official or candidate for elected office.

10. Child Support Compliance Act Acknowledgement

Effective January 1, 1999, by signing this agreement that exceeds \$100,000, the LLA acknowledges that:

- A. The LLA 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 LLA, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and providing the names of all new

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Appendix 6

**Exhibit C
Additional Provisions**

employees to the New Hire Registry maintained by the California Employment Development Department.

- C. Questions about the New Employee Registry and reporting requirements are to be directed to the California Employment Development Department.

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California Department of Public Health

Appendix 6 Exhibit D(S)

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, "grant", "Grantee" and "Subgrantee" respectively.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount, agreement is federally funded, etc.). The provisions herein apply to this agreement unless the provisions are removed by reference on the face of the agreement, the provisions are superseded by an alternate provision appearing elsewhere in the agreement, or the applicable conditions do not exist.

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2. Procurement Rules
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6. Audit and Record Retention
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9. Prior Approval of Training Seminars, Workshops, or Conferences
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13. Financial and Compliance Audit Requirements
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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 Health Services (CDHS) 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 CDHS' 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 CDHS' 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 CDHS'. 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, miscellaneous property, commodities and/or supplies are furnished by CDHS' or expenses for said items are reimbursed with state funds.)

a. Equipment definitions

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

- (1) **Major equipment:** A tangible or intangible item having a base unit cost of **\$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by CDHS or the cost is reimbursed through this agreement. Software and videos are examples of intangible items that meet this definition.
- (2) **Minor equipment:** A tangible item having a base unit cost of **less than \$5,000** with a life expectancy of one (1) year or more that is listed on the CDHS Asset Management Unit's Minor Equipment List and is either furnished by CDHS or the cost is reimbursed through this agreement. Contractors may obtain a copy of the Minor Equipment List by making a request through the CDHS program contract manager.
- (3) **Miscellaneous property:** A specific tangible item with a life expectancy of one (1) year or more that is either furnished by CDHS or the cost is reimbursed through this agreement. Examples include, but are not limited to:

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California Department of Public Health - Special Terms and Conditions

Appendix 6 Exhibit D(S)

furniture (excluding modular furniture), cabinets, typewriters, desktop calculators, portable dictators, non-digital cameras, etc.

- 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 CDHS program contract manager, to have all remaining equipment purchased through CDHS' Purchasing Unit. The cost of equipment purchased by or through CDHS shall be deducted from the funds available in this agreement. Contractor shall submit to the CDHS 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 CDHS. The equipment will be delivered to the Contractor's address, as stated on the face of the agreement, unless the Contractor notifies the CDHS 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.

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California Department of Public Health - Special Terms and Conditions

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- (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 CDHS, prior written authorization from the appropriate CDHS 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 CDHS, 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 CDHS (e.g., when CDHS has a need to monitor certain purchases, etc.), CDHS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. CDHS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that CDHS 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. CDHS 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.

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3. Equipment Ownership / Inventory / Disposition

(Applicable to agreements in which equipment and/or miscellaneous property is furnished by CDHS and/or when said items are purchased or reimbursed with state funds.)

- a. Wherever the term equipment and/or miscellaneous property is used in Provision 3, the definitions in Provision 2, Paragraph a shall apply.

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

- (1) CDHS requires the reporting, tagging and annual inventorying of all equipment and/or miscellaneous property that is furnished by CDHS or purchased/reimbursed with funds provided through this agreement.

Upon receipt of equipment and/or miscellaneous property, the Contractor shall report the receipt to the CDHS 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 CDHS' Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with CDHS Funds) does not accompany this agreement, Contractor shall request a copy from the CDHS 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 miscellaneous property to the CDHS program contract manager using a form or format designated by CDHS' Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of CDHS-Funded Equipment) does not accompany this agreement, Contractor shall request a copy from the CDHS program contract manager. Contractor shall:

- (a) Include in the inventory report, equipment and/or miscellaneous property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
- (b) Submit the inventory report to CDHS according to the instructions appearing on the form or issued by the CDHS program contract manager.
- (c) Contact the CDHS program contract manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or miscellaneous property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by CDHS' Asset Management Unit.

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- b. Title to state equipment and/or miscellaneous property shall not be affected by its incorporation or attachment to any property not owned by the State.
- c. Unless otherwise stipulated, CDHS 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 miscellaneous 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 miscellaneous property.
 - (1) In administering this provision, CDHS may require the Contractor and/or Subcontractor to repair or replace, to CDHS' satisfaction, any damaged, lost or stolen state equipment and/or miscellaneous property. In the event of state equipment and/or miscellaneous 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 CDHS program contract manager.
- e. Unless otherwise stipulated by the program funding this agreement, equipment and/or miscellaneous property purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, shall only be used for performance of this agreement or another CDHS 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 miscellaneous property to the CDHS program contract manager and shall, at that time, query CDHS as to the requirements, including the manner and method, of returning state equipment and/or miscellaneous property to CDHS. Final disposition of equipment and/or miscellaneous property shall be at CDHS expense and according to CDHS instructions. Equipment and/or miscellaneous property disposition instructions shall be issued by CDHS immediately after receipt of the final inventory report. At the termination or conclusion of this agreement, CDHS may at its discretion, authorize the continued use of state equipment and/or miscellaneous property for performance of work under a different CDHS agreement.
- g. **Motor Vehicles**

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

 - (1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, within thirty (30) calendar days prior to the termination or end of this agreement, the

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Contractor and/or Subcontractor shall return such vehicles to CDHS and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to CDHS.

- (2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDHS 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 CDHS 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 CDHS 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 CDHS 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 CDHS program contract manager.
- (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 CDHS.
- (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

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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 Health Services).

[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 Health Services, 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 the 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 CDHS, 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, CDHS 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.

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- (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 Administrative Manual Section 1233 subsection 3. View this publication at the following Internet address: <http://sam.dgs.ca.gov>.
- b. CDHS 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 CDHS 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 CDHS.
- 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 CDHS. CDHS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by CDHS.
- d. Contractor shall maintain a copy of each subcontract entered into in support of this agreement and shall, upon request by CDHS, make copies available for approval, inspection, or audit.
- e. CDHS 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.

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- 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 CDHS to the Contractor, to permit CDHS 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 CDHS, 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, and 17.

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 CDHS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by CDHS 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.

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- c. Contractor agrees that CDHS, 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

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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 CDHS has agreed in a signed writing to accept a license, CDHS 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 CDHS 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 CDHS' Intellectual Property in existence prior to the effective date of this agreement. Except as otherwise set forth herein, Contractor shall

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not use any of CDHS' Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of CDHS. **Except as otherwise set forth herein, neither the Contractor nor CDHS 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 CDHS, Contractor agrees to abide by all license and confidentiality restrictions applicable to CDHS in the third-party's license agreement.

- (4) Contractor agrees to cooperate with CDHS in establishing or maintaining CDHS' exclusive rights in the Intellectual Property, and in assuring CDHS' 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 CDHS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or CDHS and which result directly or indirectly from this agreement or any subcontract.
- (5) Contractor further agrees to assist and cooperate with CDHS 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 CDHS' 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 CDHS 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 CDHS, 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

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Intellectual Property rights of CDHS 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 CDHS to any work product made, conceived, derived from, or reduced to practice by Contractor or CDHS 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 CDHS and which result directly or indirectly from this agreement, shall include CDHS' notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2006, etc.], California Department of Health Services. This material may not be reproduced or disseminated without prior written permission from the California Department of Health Services." 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 CDHS 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 CDHS, without additional compensation, all its right, title and interest in and to such inventions and to assist CDHS in securing United States and foreign patents with respect thereto.

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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 CDHS' prior written approval; and (ii) granting to or obtaining for CDHS, 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 CDHS 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 CDHS.

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 CDHS 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.

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- (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 CDHS 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) CDHS 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 CDHS 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 CDHS' 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 CDHS 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. CDHS reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDHS.
- (2) Should any Intellectual Property licensed by the Contractor to CDHS under this agreement become the subject of an Intellectual Property infringement

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claim, Contractor will exercise its authority reasonably and in good faith to preserve CDHS' right to use the licensed Intellectual Property in accordance with this agreement at no expense to CDHS. CDHS 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 CDHS 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, CDHS 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 CDHS for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges CDHS would suffer irreparable harm in the event of such breach and agrees CDHS 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, CDHS 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.

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9. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior CDHS 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, his/her 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 CDHS 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 CDHS without prior written authorization from the CDHS 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.

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

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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 CDHS' action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDHS, the Contractor must seek resolution using the procedure outlined below.
 - (1) The Contractor should first informally discuss the problem with the CDHS 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. Should the Contractor disagree 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.

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- d. Unless otherwise stipulated in writing by CDHS, all dispute, grievance and/or appeal correspondence shall be directed to the CDHS program contract manager.
- e. There are organizational differences within CDHS' 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 CDHS 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 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, grants, or subventions to other governmental agencies or units of government nor contracts 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; 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, 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

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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 CDHS 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 CDHS 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 CDHS program contract manager shall forward the audit report to CDHS' 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 CDHS program funding this agreement must provide advance written approval of the specific amount allowed for said audit expenses.
 - f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.
 - g. Nothing in this agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.
 - h. Nothing in this provision limits the authority of the State to make audits of this contract, 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.

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- 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, CDHS shall act upon the proposal within 60 days after receipt of the written proposal. CDHS 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, CDHS 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, CDHS 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 CDHS 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.)

CDHS 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 CDHS. Negative performance evaluations may be considered by CDHS 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 CDHS or if IT equipment is procured.)

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Contractor warrants that it will provide only Four-Digit Date Compliant. 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 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, CDHS 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,

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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 fringe benefits shall be at actual cost.

f. Earned/Accrued Compensation

- (1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.
- (2) For multiple year contracts, 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 contract 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.

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(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 contract period of one year. 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 CDHS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.