

EXHIBIT A SCOPE OF WORK

1. BACKGROUND

The Department of Managed Health Care's (DMHC) mission is to protect consumers' health care rights and ensure a stable health care delivery system. The DMHC accomplishes its mission by ensuring the health care system works for consumers. The Department protects the health care rights of more than 25 million Californians by regulating health care service plans, assisting consumers through a consumer Help Center, educating consumers on their rights and responsibilities and preserving the financial stability of the managed health care system.

With the number of grievances and Independent Medical Reviews (IMRs) received by the DMHC trending upward, the need for ongoing clinical, network, and analytics consultation has arisen, and is critical and extremely time sensitive. It is imperative now more than ever that the DMHC employ a Chief Medical Officer (CMO) to assist with compliance of statutory and regulatory requirements, to drive improvement in clinical outcomes for health plan enrollees, and to improve the DMHC's effectiveness.

2. OVERVIEW

Under the leadership of the Director and Chief Deputy Director, the incumbent acts as the DMHC's CMO, serving as the chief consultant on clinical and provider network adequacy issues and advising on clinical integrity in DMHC programs, contracts and activities. The CMO will develop the DMHC's comprehensive health plan quality improvement program (QIP) to drive continuous improvement in clinical outcomes for health plan enrollees.

The CMO oversees DMHC's clinical quality improvement programs and provides consulting for DMHC clinical contracts including Independent Medical Review, Medical Expertise, medical surveys, enforcement expert witness, and claims examinations.

The CMO serves as the DMHC's chief consultant on clinical matters and provides clinical technical assistance on proposed legislation and regulatory actions. The CMO also coordinates with CMOs and clinical staff at health plans to resolve disputes on behalf of consumers and with CHHS/State of California/Federal government and agencies on matters of mutual impact or concern. Additionally, the CMO comments on draft federal regulations, as needed.

Actions of the CMO have a direct impact on the reputation, confidence and effectiveness of the operations of the DMHC statewide. The CMO is positioned to provide information, advice, and support on a regional and statewide basis regarding value creation, delivery system reform, quality, and network management. Because of this, the CMO will develop, plan, and advise on implementation of policies that advance and improve the health of Californians and strengthen the health care delivery system.

3. **LOCATION AND HOURS**

The Contractor's tasks may be performed at the DMHC or offsite at the Contractor's business location. Initially, the Contractor is expected to be on site to familiarize him/herself with DMHC operations, DMHC staff and to physically attend key meetings regularly including but not limited to weekly Deputy Director meetings and monthly Program Manager meetings. Meetings may be held at the DMHC headquarters located at 980 9th Street, Sacramento, CA 95814 or at 1 FTB Court, Sacramento, CA 95827, but may be held at other venues, as needed. The tasks shall require a work week of up to thirty (30) hours, unless otherwise specified. As the contract evolves, the Contractor may work remotely from the Contractor's business location.

4. **CONTRACT TERM**

The term of this contract shall be July 1, 2016 through June 30, 2019.

5. **CONTRACT MANAGERS**

The Contract Managers during the term of this Agreement will be:

Department of Managed Health Care	Contractor Name:
Division/Unit: Office of the Director	Division/Unit:
Name: Marta Green	Name:
Address: 980 9 th Street, Suite 500 Sacramento, CA 95814	Address:
Phone: (916) 327-0098	Phone:
Fax: (916) 322-2579	Fax:
E-mail: Marta.Green@dmhc.ca.gov	E-mail:

The parties may change their Contract Manager upon providing ten (10) days written notice to the other party. Said changes shall not require an amendment to this Agreement.

6. **ADMINISTRATIVE REQUIREMENTS**

The Contractor agrees to complete the Administrative Requirements outlined in Exhibit B – Special Terms and Conditions, Section 8 a), b), c), and d). The Contractor agrees to abide by the terms and conditions outlined in both Exhibit B – Special Terms and Conditions and Exhibit C – General Terms and Conditions.

7. **MINIMUM QUALIFICATIONS**

The Contractor must be a licensed medical doctor in the State of California and have a minimum of three years' experience interacting with health plans and/or provider groups.

8. **TASKS TO BE PERFORMED**

Under the direction of the Director and Chief Deputy Director, the Contractor will perform the following tasks:

- a. Advise the Director on clinical matters, serve as the DMHC's chief clinical consultant on medical matters, provide clinical technical assistance on proposed legislation and

- regulatory actions, coordinate with CMOs and clinical staff at CHHS/State of California/Federal governments and agencies on matters of mutual impact or concern, and provide clinical comments to draft federal regulations.
- b. Develop and recommend to the Director appropriate clinical quality improvement standards, regulations and policies.
 - c. Provide leadership and expert analysis, evaluation, and recommendations on the design, methodologies and findings of research studies and program evaluation papers and represent the DMHC in symposia and conferences on managed care policies and quality improvement issues.
 - d. Act as a clinical advisor to the DMHC's divisions, including but not limited to the Help Center, Office of Enforcement, Office of Financial Review, Office of Legal Services, and Office of Plan Licensing, on matters that have complex clinical components, including but not limited to, licensing filings, claims audits, financial exams, medical surveys, enforcement cases, and litigation.
 - e. Provide clinical consultation on DMHC contracts, as needed, including expert analysis and input into development of contract language.
 - f. Provide clinical input and guidance in the implementation and improvement of the DMHC Strategic Plan, ensuring sound medical practices are reflected in DMHC's goals, objectives, strategies and core values.
 - g. Direct the design, development, and implementation of DMHC's statewide health plan quality improvement program.
 - h. Work with DMHC's Directorate and internal and external stakeholders to identify Quality Improvement Program (QIP) elements that are patient-focused and data-driven.
 - i. Assess and advise on the appropriate and most effective strategies for QIP implementation, considering DMHC's statutory and regulatory authority.
 - j. Provide ongoing expert analysis and interpretation of QIP efficacy and make suggested enhancements.
 - k. Oversee and coordinate department involvement with statewide initiatives (e.g., the Right Care Initiative and Let's Get Healthy California).
 - l. Act as the departmental medical liaison providing outreach and maintaining working relationships with external stakeholders such as health plans, medical groups and organizations, advisory committees, hospitals and integrated health care systems, health condition organizations, professional societies, and consumer advocacy groups.
 - m. Participate as a member of the DMHC management team by taking an active role in implementing DMHC's strategic plan goals and objectives. The CMO acts on

requests from the Director and Chief Deputy Director to develop special programs and provide program briefings.

9. **DELIVERABLES**

- a. The Contractor understands that all recommendations and contract deliverables must comply with the Knox Keene Health Care Service Plan Act of 1975, as amended, and the California Code of Regulations Title 28, Division 1, Chapter 1 (sections 1300.41-1300.826), as amended, as well as all other laws by which DMHC is regulated.
- b. The contract deliverables will be identified jointly by the Director and the Chief Deputy Director with agreement by the Contractor on deliverable dates.
- c. The Contractor shall provide all deliverables within the timeframe specified and required by the State.
- d. The Contractor understands and acknowledges that all deliverables must be reviewed, approved, and accepted by the State.
- e. The Contractor understands that any State-requested revisions to any deliverable shall be incorporated by the Contractor within seven (7) calendar days from the date in which the State provided its feedback, unless a different timeframe is required and specified by the State.
- f. In the event the State requires additional refinements and modifications for any deliverable which occurs after that deliverable has been previously accepted by the State, the Contractor shall be required to make the additional revisions until the revised deliverable is accepted and approved by the State.

EXHIBIT B SPECIAL TERMS AND CONDITIONS

1. RESOLUTION OF DISPUTES

Notwithstanding the General Terms and Conditions (Exhibit C), and in compliance with Public Contract Code 10381, DMHC adds:

The Contractor should first discuss the problem informally with the Department of Managed Health Care (DMHC) Contract Manager. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the DMHC program Section Chief. The grievance must state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The program Section Chief must make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The program Section Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. Should the Contractor disagree with the program Section Chief's decision, the Contractor may appeal to the next level.

The Contractor must prepare a letter indicating why the program Section Chief's decision is unacceptable, attaching to it the Contractor's original statement of the dispute with supporting documents along with a copy of the program Section Chief's response. This letter shall be sent to the DMHC Deputy Director or designee in which the Section is organized within ten (10) working days from receipt of the program Section Chief's decision. The Deputy Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter.

Authority to terminate performance under the terms of this Agreement is not subject to appeal under this section. All other issues including, but not limited to, the amount of any equitable adjustment and the amount of any compensation or reimbursement that should be paid to the Contractor shall be subject to the disputes process under this section. (Public Contract Code (PCC) Sections 10240.5, 10381, 22200, et seq.)

2. CONTRACTOR'S RIGHTS AND OBLIGATIONS

Public Contract Code Sections 10335-10381 contain language describing the Contractor's duties, obligations, and rights under this Agreement. By signing this Agreement, the Contractor certifies that he or she has been fully informed regarding these provisions of the Public Contract Code.

As required by Public Contract Code Section 10371(e)(2), résumés attached hereto and by this reference are incorporated herein.

3. CONTRACTOR EVALUATION

The Contractor's performance under this Agreement shall be evaluated within sixty (60) days after completion. For this purpose a form designated by the Department of General Services (the "Contract/Contractor Evaluation," Form STD. 4) shall be used. Post-evaluations shall remain on file for a period of thirty-six (36) months. If the Contractor did not satisfactorily perform the work or service specified in the Agreement, Contract Manager shall place one copy of the evaluation form in the Agreement file and send one copy of the form to the Department of General Services within five (5) working days of the completion of the evaluation. Upon filing an unsatisfactory evaluation with the Department of General Services, the Contract Manager shall notify and send a copy of the evaluation to the Contractor within fifteen (15) days. The Contractor shall have thirty (30) days to prepare and send statement to the Contract Manager and the Department of General Services defending his or her performance under the Agreement. The Contractor's statement shall be filed with the evaluation

in the Contract Manager's file and at the Department of General Services. (PCC 10369)

4. LICENSES AND PERMITS

The Contractor shall be an individual or firm licensed to do business in California and shall obtain at his/her expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this Agreement.

If you are a contractor located within the state of California, a business license from the city/county in which you are headquartered is necessary and must be submitted, upon DMHC request. However, if you are a corporation, a copy of your incorporation documents/letter from the Secretary of State's Office can be submitted, upon DMHC request. If you are a contractor outside the state of California, you will need to submit, upon request, a copy of your business license or incorporation papers for your respective state showing that your company is in good standing in that state.

In the event any license expires at any time during the term of this Agreement, the Contractor agrees to provide the State with a copy of the renewed license within 30 days following the expiration date. In the event the Contractor fails to keep in effect at all times all required license(s) and permit(s), the State may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

5. INSURANCE REQUIREMENTS

When the Contractor submits a signed agreement to the State, if DMHC requests, the Contractor shall furnish a certificate of insurance, stating that there is liability insurance presently in effect of not less than \$2,000,000 per occurrence for bodily injury and property damage liability combined.

The Certificate of Insurance will include provisions a, b, and c in their entirety:

- a. The insurer will not cancel insured's coverage without 30 days prior written notice to the state.
- b. The State of California, its officers, agents, employees, and servants are included as additional insureds, but only insofar as operations under this Agreement are concerned.
- c. The State will not be responsible for any premiums or assessments on the policy. The Contractor agrees that the bodily injury liability insurance herein provided for shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time during the term of this Agreement, the Contractor agrees to provide at least 30 days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one year. New certificates or insurance are subject to the approval of the Department of General Services and the Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, the State may, in addition to other remedies it may have, terminate this Agreement upon occurrence of such event.

The State will not provide for nor compensate the Contractor for any insurance premiums or costs for any type or amount of insurance.

Automobile Liability

The Contractor shall maintain commercial auto liability insurance with limits not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. Should the scope of the Agreement involve transportation of hazardous materials, an MCS-90 endorsement is required.

Commercial General Liability

The Contractor, along with any of its subcontractors engaged to perform work pursuant to this Agreement, shall maintain Commercial Liability insurance with limits of at least \$2,000,000 covering any damages caused by an error, omission, or negligent act of the Contractor in connection with the work provided such claims arise during the period commencing upon the preparation of the project work documents and ending 5 years following substantial completion.

Workers' Compensation

The Contractor certifies and is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code and the Contractor agrees to comply with such provisions before commencing performance of the work of this Agreement.

By signing this Agreement, the Contractor hereby warrants that it carries Workers' Compensation insurance on all of its employees who will be engaged in the performance of this Agreement. If staff provided by the Contractor are defined as independent contractors, this clause does not apply.

6. TERMINATION WITHOUT CAUSE

Notwithstanding GTC termination clause, DMHC adds the following:

The DMHC may terminate this Agreement for any or no reason whatsoever, upon giving the Contractor thirty (30) calendar days prior written notice.

Any termination shall be effected by written notice to the Contractor, either hand-delivered to the Contractor or sent certified mail, return receipt requested. The notice of termination shall specify the effective date of termination.

Upon receipt of notice of termination, and except as otherwise directed in the notice, the Contractor shall:

- (a) Stop work on the date specified in the notice;
- (b) Place no further orders or enter into any further subcontracts for materials, services or facilities except as necessary to complete work under the Agreement up to effective date of termination;
- (c) Terminate all orders and subcontracts;
- (d) Promptly take all other reasonable and feasible steps to minimize any additional cost, loss, or expenditure associated with work terminated, including, but not limited to reasonable settlement of all outstanding liability and claims arising out of termination of orders and subcontracts;
- (e) Deliver or make available to the DMHC all data, drawings, specifications, reports, estimates, summaries, and such other information and material as may have been accumulated by the Contractor under this Agreement, whether completed, partially completed, or in progress.

In the event of termination, an equitable adjustment in the price provided for in this Agreement shall be made. Such adjustment shall include reasonable compensation for all services rendered, materials supplied, and expenses incurred pursuant to this Agreement prior to the effective date of termination.

7. COMPUTER SOFTWARE COPYRIGHT COMPLIANCE

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

8. ADMINISTRATIVE REQUIREMENTS

The following administrative requirements must be completed before execution of the contract. The contractor is responsible for any costs or expenses, including time, for completing these items.

a. Background Investigation

Due to the nature of the services to be performed, the DMHC requires a thorough background investigation of the Contractor, its agents, subcontractors and individual employees who will have access to medical information as part of their duties under this Agreement; and reserves the right to disapprove any individual from performing under the scope of this Agreement. This background investigation includes fingerprinting and a California Department of Justice criminal record check. Each Contractor, agent, subcontractor and individual employee who is to perform services under this Agreement must voluntarily consent to a background investigation. Fingerprint rolling fees and background investigation costs will be borne by the Contractor, payable at time of fingerprinting. Previous clearances and/or investigations conducted by other agencies will not be accepted as an alternative to the DMHC's background investigation. It is the Contractor's responsibility to notify the DMHC when an employee working under this Agreement is terminated, not hired or reassigned to other work.

Per Government Code Section 1041, pre-employment background investigations shall be required of contract employees whose duties include or would include access to medical information. The pre-employment background investigation will consist of fingerprinting and an inquiry to the Department of Justice (DOJ) and the Federal Bureau of Investigations (FBI) to disclose Criminal Offender Record Information (CORI). Investigations are conducted to ascertain whether a contract employee has any state or federal convictions, or is currently released from custody on bail or on their own recognizance pending trial, of a crime of "moral turpitude".

b. Information Security, Integrity and Confidentiality Statement

Complete Attachment I for Contractor Authorized Representative and Attachment II for project employees, agents or sub-contractors, which certify that the Contractor and the Contractor's staff understand and agree to comply with the DMHC's Information Security and Confidentiality Statement

c. Annual Information Security Awareness and Privacy Training

California state policy requires that the DMHC must provide for the proper use and protection of its information assets and arrange for basic security and privacy awareness training (SAM Sections 5305.1; 5320.1; 5320.2, SIMM 5330-B) for **new users, and annually** thereafter. Therefore, DMHC contractors (including subcontractors) who access state resources must complete the designated DMHC online annual Information Security Awareness and Privacy Training prior to accessing DMHC information assets and/or beginning work on a contract. The DMHC Information Security Officer will set up your training account. While the training course is free-of-charge, any expenses, including contractor time, related to new and/or annual Information Security Awareness and Privacy Training will be the responsibility of the contractor. Active contractors/subcontractors must provide a list of their employees' names and email addresses annually to the DMHC Information Security Officer to administer this online annual Information Security Awareness and Privacy Training.

d. Statement of Economic Interests (Form 700)

The California Political Reform Act requires individuals holding positions designated within an agency's conflict of interest code to file an annual Statement of Economic Interests (Form 700). The DMHC's conflict of interest code designates "Consultants" among the positions that must file a Form 700. Your employees or independent contractors, working on the above named contract, have been designated as such consultants and are required to file an original Form 700 with the DMHC. (See Government Code Sections 82019 and 87302.) Additionally, the Government Code requires all officials, employees and contracted consultants designated to file a Form 700, to also complete an Ethics Certification when first assuming a designated position and then every odd numbered year thereafter. In some cases, this means that consultants may be required to complete the Ethics Certification two years in a row if they assumed their designated position during an even numbered year. (See Government Code Sections 11146 through 11146.4.)

9. CONFLICT OF INTEREST

No Contractor shall participate in the making of, or in any way attempt to influence, a decision in which the Contractor knows, or has reason to know, that it has a financial interest. The Contractor shall notify the DMHC Contract Manager immediately in writing if the Contractor has a potential, or actual, conflict of interest relating to this Agreement.

The Contractor shall abide by the provisions of Government Code Sections 1090, 81000 et seq., 82000 et seq., 87100 et seq., and 87300 et seq., Public Contract Code (PCC) Sections 10335 et seq. and 10410 et seq., California Code of Regulations, Title 2, Section 18700 et seq., and the DMHC Incompatible Activities Policy.

Each of the Contractor's employees assigned to the DMHC project shall file a Statement of Economic Interests, Fair Political Practices Commission (FPPC) Form 700 within thirty (30) days of commencing services under the Agreement, annually during the life of the Agreement, and within thirty (30) days after the expiration of the Agreement.

The Contractor shall have a continuing duty to disclose to the DMHC, in writing, all interests and activities that create an actual or potential conflict of interest in performance of the Agreement.

The Contractor shall have a continuing duty to keep the DMHC timely and fully apprised in writing of any material changes in the Contractor's business structure and/or status. This includes any changes in business form, such as a change from sole proprietorship or partnership into a corporation or vice-versa; any changes in company ownership; any dissolution of the business; any change of the name of the business; any filing in bankruptcy; any revocation of corporate status by the Secretary of State; and any other material changes in the Contractor's business status or structure that could affect the performance of the Contractor's duties under the Agreement.

If the Contractor violates any provision of the above paragraphs, such action by the Contractor shall render this Agreement void.

10. PROHIBITION OF FOLLOW-ON CONTRACTS

No Contractor or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract. (PCC 10365.5)

11. POTENTIAL SUBCONTRACTORS

Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the State and any subcontractors, and no subcontract shall relieve the Contractor of responsibilities

and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. Although the State shall have no obligation to pay any moneys directly to any subcontractor, the Contractor is encouraged to make timely payment to its subcontractors under all applicable State laws, rules and regulations.

12. FORCE MAJEURE

Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- Acts of God or of the public enemy, and
- Acts of the federal or State government in either its sovereign or contractual capacity

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.

13. WAIVER OF RIGHTS

Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

14. AMENDMENTS

The DMHC reserves the right to amend this Agreement for up to an additional year and/or to increase funding. Should the DMHC amend this Agreement to extend the term, the proposed rates or prices shall remain the same. All terms and conditions shall remain the same, unless changes are mutually agreed upon by the Contractor and the DMHC and incorporated into the amendment. All agreement amendments are subject to satisfactory performance and funding availability. Agreement amendments will not take effect until the Contractor has received a copy of the final purchase document that has been signed by the DMHC Procurement Contract Officer or designee.

15. NON-ELIGIBLE ALIEN CERTIFICATION

An alien who is not: (1) a qualified alien; or (2) a nonimmigrant under the Immigration and Nationality Act; or (3) an alien who is paroled into the United States for less than one year, is not eligible for any State or local public benefit. The term "State or local public benefit" means any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government. By signing this contract, the Contractor certifies under penalty of perjury under the laws of the State of California that he or she is not a non-eligible alien.

**EXHIBIT C
GENERAL TERMS AND CONDITIONS**

1. **APPROVAL:** This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. **ASSIGNMENT:** This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT:** Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. **DISPUTES:** Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. **TERMINATION FOR CAUSE:** The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. **INDEPENDENT CONTRACTOR:** Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. **RECYCLING CERTIFICATION:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40),

marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

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

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

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

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

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

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

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured

thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

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

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

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

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

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

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

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

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

20. LOSS LEADER:

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