

Covered California/ **San Benito County HHS Public Health Services**

EXHIBIT B
(Standard Agreement)

GENERAL TERMS AND CONDITIONS

A. APPROVAL

This Agreement is of no force or effect until signed by both parties.

B. ASSIGNMENT

This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of Covered California in the form of a formal written amendment.

C. AMENDMENT

This Agreement may be amended by mutual consent of the parties. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties. No oral understanding or agreement not incorporated in the Agreement is binding on any of the parties.

D. AUDIT

Contractor agrees that the awarding department ("Covered California") and the Bureau of State Audits, Health and Human Services, or their designated representatives, shall have the right to review and to copy any records and supporting documentation directly pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of ten 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 the same right of Covered California to audit records and interview staff in any subcontract related to performance of this Agreement (45 C.F.R. sec. 155.1210, Gov. Code sec. 8546.7, Pub. Contract Code sec. 10115 et seq., Cal. Code Regs, Title 2, sec. 1896).

E. INDEMNIFICATION

Contractor agrees to indemnify, defend and save harmless Covered California, its officers, trustees, agents and employees from any and all claims, losses, costs, liabilities, damages or deficiencies, including interest, penalties and attorneys' fees, which:

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1. Arise out of or are due to, or are alleged to arise out of or be due to, a breach by the Contractor of any of its representations, warranties, covenants or other obligations, implied or express, contained in this Agreement, or
2. Are caused by or result from, or are alleged to arise out of or result from, the Contractor's acts or omissions constituting bad faith, willful misfeasance, negligence or reckless disregard of its duties under this Agreement, or
3. Accrue or result, or are alleged to accrue or result, 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, or
4. Arise out of or are due to, or are alleged to arise out of or be due to, any claim or allegation of infringement, misappropriation or violation of any patent, copyright, trademark, trade secret, domain name or other intellectual property right comprising or involving any of the subject inventions, prior inventions or other inventions provided in any way by Contractor and used, reproduced or otherwise exploited by Covered California in connection with any of the Agreement programs or any turnover thereof; or
5. Arise out of or are due to, or are alleged to arise out of or be due to, any violation of applicable security or privacy laws, or any other applicable laws, by Contractor or any subcontractor or agent under Contractor's control.

If and to the extent that the Contractor has knowledge of a claim that it believes may develop into an action that would be subject to this Agreement, the Contractor shall promptly notify Covered California of the claim.

Right to Tender or Undertake Defense. If Covered California is named a party in any judicial, administrative, or other proceeding arising out of or in connection with a breach of this Agreement or a matter for which the Contractor is obligated to indemnify Covered California under this Agreement, then Covered California will have the option at any time to either (i) tender its defense to Contractor, in which case Contractor will provide qualified attorneys, consultants, and other appropriate professionals to represent Covered California's interests at Contractor's expense, or (ii) undertake its own defense, choosing the attorneys, consultants, and other appropriate professionals to represent its interests, in which case Contractor will be responsible for and shall pay reasonable fees and expenses of such attorneys, consultants, and other appropriate professionals. If Covered California elects option (ii), above, the Contractor shall be afforded a

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reasonable opportunity to participate in the defense and attend the legal proceedings at its own expense. However, Covered California shall have sole control of the defense.

Right to Control Resolution. Notwithstanding that Covered California may have tendered its defense to the Contractor, neither party shall settle, compromise or resolve any claims, causes of action, liabilities or damages against Covered California without the consent of the other party, which consent shall not be unreasonably withheld. Any such resolution will not relieve the Contractor of its obligation to indemnify Covered California.

F. DISPUTES

Disputes shall be administered in accordance with the procedures outlined in this section. During any dispute, Contractor will continue with the responsibilities under this Agreement, unless directed otherwise by Covered California in writing. Contractor cannot dispute Covered California's decision to terminate this Agreement without cause.

Disputes must follow the following procedures:

1. The parties shall deal in good faith and attempt to resolve disputes informally. If the dispute cannot be resolved informally, Contractor shall submit a written dispute notice to Covered California's Project Representative within 15 calendar days after the date of the action causing the dispute or following the failure of informal resolution. The written dispute notice shall contain the following information:
 - a. The decision or issue or actions under dispute;
 - b. The reason(s) Contractor believes the decision or position taken by Covered California is in error (if applicable, reference pertinent contract provisions);
 - c. Identification of all documents and substance of all oral communication which support Contractor's position; and
 - d. The dollar amount in dispute, if applicable.
2. Within 15 calendar days after receipt of the dispute notice, Covered California Project Representative shall issue a written decision regarding the dispute. The written decision shall respond to all relevant points in the dispute notice and include the following information:

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- a. A description of the dispute;
 - b. A reference to pertinent contract provisions, if applicable;
 - c. A statement of the factual areas of agreement or disagreement; and
 - d. A statement of the representative's decision with supporting rationale.
3. If the Contractor is not satisfied with the decision of Covered California Project Representative, the Contractor may, within 15 calendar days of the date of Covered California Project Representative's decision, submit a written appeal to Covered California Executive Director. The Executive Director, or his/her designee shall issue a final decision on the dispute within 30 calendar days after the date of receipt of the Contractor's written appeal. If the Executive Director, or his/her designee fails to render a final decision within 30 calendar days after receipt of Contractor's written appeal, it shall be deemed a final decision adverse to the Contractor's contentions. The Executive Director's, or his/her designee's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 30 calendar days following the date of the final decision.
4. Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor agrees to diligently proceed with the performance of this Agreement, including the delivery of goods or providing of services in accordance with Covered California's instructions. Contractor's failure to diligently proceed in accordance with Covered California's instructions shall be considered a material breach of this Agreement.

G. TERMINATION FOR CAUSE

Covered California may terminate this Agreement should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided, unless otherwise agreed to by Covered California in writing. Such right of termination shall be without prejudice to any other remedies available to Covered California. Upon receipt of any notice terminating this Agreement, the Contractor shall immediately discontinue all activities affected, unless the notice directs otherwise, and Covered California may proceed with the work in any manner deemed proper by Covered California. Covered California may, at its sole discretion, offer an opportunity to cure any breach prior to terminating for default.

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This Agreement may be terminated without cause by Covered California upon 30 calendar days' written notice to the Contractor.

I. 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 Covered California except for purposes of Civil Code section 1798.24.

J. RECYCLING CERTIFICATION

The Contractor shall certify in writing under penalty of perjury the minimum, if not exact, percentage of recycled content, both post-consumer waste and secondary waste, as defined in the Public Contract Code section 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code section 12209. Contractor may certify that the product contains zero recycled content.

K. NON-DISCRIMINATION CLAUSE

During the performance of this Agreement, Contractor and its subcontractors, as well as their agents and employees, shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (including health impairments related to or associated with a diagnosis of cancer for which a person has been rehabilitated or cured), age (over 40), marital status, and use of family and medical care leave pursuant to State or federal law. Contractor and subcontractors, as well as their agents and employees, shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and subcontractors, as well as their agents and employees, shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code sec. 12990(a-f) et seq.) and the applicable regulations promulgated thereunder (Title 2, Cal. Code of Regs. sec. 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

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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.

L. CONTRACTOR CERTIFICATION CLAUSES AND CALIFORNIA CIVIL RIGHTS LAW CERTIFICATION

The Contractor Certification Clauses and California Civil Rights Law Certification (hereinafter referred to as the "Contractor Certification Form") are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto. Covered California shall provide Contractor with the Contractor Certification Form and Contractor shall execute the Contractor Certification Form before commencing any work under this Agreement. Contractor certifies that it is in compliance and will remain in compliance with all clauses as set forth in the Contractor Certification Form.

M. TAX DELINQUENCY

Contractor acknowledges that prior to executing any contract, Contractor will obtain written verification from the Franchise Tax Board (FTB) and the Board of Equalization (BOE) that Contractor is not identified as tax delinquent. Contractor also acknowledges that the continuation of this contract is contingent upon maintaining good standing with FTB and BOE. Should the tax status of Contractor change with respect to either of these state agencies, Contractor must notify the Covered California immediately.

N. TIMELINESS

Time is of the essence in this Agreement.

O. GOVERNING LAW

This Agreement shall be administered, construed, and enforced according to the laws of the State of California without regard to any conflict of law provisions to the extent such laws have not been preempted by applicable federal law. Any suit brought hereunder, including any action to compel arbitration or to enforce any award or judgment rendered thereby, shall be brought in the State or federal courts sitting in Sacramento, California, the parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by California law.

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P. CHILD SUPPORT COMPLIANCE ACT

In accordance with the Child Support Compliance Act:

1. The Contractor acknowledges 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 sec. 5200) of Part 5 of Division 9 of the Family Code; and
2. 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.

Q. SEVERABILITY

If any provision in this Agreement is invalid or unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to effectuate the purpose and intent of this Agreement, and the invalidity or unenforceability of any provision in this Agreement in any jurisdiction shall not affect the validity or enforceability of any such provision in any other jurisdiction.

R. UNION ORGANIZING

By signing this Agreement, Contractor hereby acknowledges the applicability of Government Code sections 16645 through 16649 to this Agreement and agrees to the following:

1. Contractor will not assist, promote or deter union organizing by employees performing work on a State service contract, including a public works contract.
2. No State funds received under this Agreement will be used to assist, promote or deter union organizing.
3. Contractor will not, for any business conducted under this Agreement, use any State property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the State property is equally available to the general public for holding meetings.

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4. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from State funds has been sought for these costs, and Contractor shall provide those records to the attorney general upon request.
5. Contractor will be liable to the State for the amount of any funds expended in violation of the requirements of government.

AA. COMPUTER SOFTWARE COPYRIGHTS

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.

BB. SUBCONTRACTORS

Applicable to agreements in which the Contractor subcontracts out a portion of the work. Nothing contained in this Agreement or otherwise shall create any contractual relationship between Covered California and any subcontractors, and no subcontractor shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be fully responsible to Covered California for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the obligation of Covered California to make payments to the Contractor. As a result, Covered California shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

CC. INSURANCE REQUIREMENTS

When Contractor submits a signed contract to Covered California, Contractor shall furnish to Covered California a certificate of insurance stating that there is:

1. General liability insurance presently in effect for the Contractor of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined; and
2. Automobile liability, including non-owned auto liability, of not less than \$1,000,000 per occurrence for volunteers and paid employees providing

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services supported by this Agreement. The certificate of insurance will include provisions (a), (b), and (c), below, in their entirety:

- a. That the insurer will not cancel the insured's coverage without 30 calendar days' prior written notice to Covered California.
- b. That Covered California, its officers, agents, employees, and servants are included as additional insured, but only insofar as the operations under this Agreement are concerned.
- c. That Covered California will not be responsible for any premiums or assessment on the policy.

Contractor agrees that the general and automobile 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 or times during the term of this Agreement, Contractor agrees to provide at least 30 calendar 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 of insurance are subject to the approval of Covered California, and 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, Covered California may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

The Contractor shall require its subcontractors/vendors under this Agreement, other than units of local government which are similarly self-insured, to maintain adequate insurance coverage for general liability and automobile liability including non-owned auto liability, and further, the Contractor shall require all of its subcontractors/vendors to hold the Contractor and Covered California harmless. The subcontractors'/vendors' certificate of insurance shall also have the Contractor, not the State, as the certificate holder. Covered California shall be listed as an additional insured on all subcontractors' or vendors' Certificates(s) of Insurance. The Contractor shall maintain certificates of insurance for all its subcontractors/vendors.

Covered California will not provide for nor compensate Contractor for any insurance premiums or costs for any type or amount of insurance.

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

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performance of this Agreement. If staff provided by the Contractor is defined as independent contractors, this clause does not apply.

DD. INTELLECTUAL PROPERTY RIGHTS

1. All deliverables as defined in Exhibit A, Scope of Work, originated or prepared by the Contractor pursuant to this Agreement, including papers, reports, charts, and other documentation, but not including Contractor's administrative communications and records relating to this Agreement, shall, upon delivery and acceptance by Covered California, become the exclusive property of Covered California and may be copyrighted by Covered California.
2. All inventions, discoveries or improvements of the techniques or programs or materials developed pursuant to this Agreement shall be the property of Covered California.
3. This Agreement shall not preclude the Contractor from developing materials outside this Agreement which are competitive, irrespective of their similarity to materials which might be delivered to Covered California pursuant to this Agreement. All preexisting intellectual property, copyrights, trademarks and products shall be the sole property of the Contractor.

EE. CONFIDENTIALITY

The Contractor agrees to protect the personal information of all Covered California consumers and employees by following applicable federal and State privacy and security requirements.

Contractor acknowledges that by contracting with Covered California, Contractor waives any reasonable expectation of privacy in the contract information, name, and signature provided herein.

All financial, statistical, personal, technical, and other data and information related to Covered California's operations that are not publicly available and that become available to Contractor shall be protected by Contractor during or after its relationship with Covered California from unauthorized use and disclosure. Contractor agrees that Contractor shall not use any confidential information for any purpose other than carrying out the provisions of the Agreement.

Confidential information includes, but is not limited to, all non-public information, including proprietary information, of Covered California including without limitation: the deliverables; trade secrets; know-how; concepts; methods; techniques; designs; drawings; specifications; computer programs, including

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Covered California's software; support materials; information regarding Covered California's business operations and plans; client, customer, or supplier lists; pricing information; marketing plans or information; or other records concerning Covered California's finances, contracts, services, or personnel.

At the conclusion of its relationship with Covered California, Contractor shall return any and all records or copies of records relating to Covered California, or its business, or its confidential information. Contractor shall take such steps as may be reasonably necessary to prevent disclosure of confidential information to others and shall not disclose confidential information to others without the prior written consent of Covered California. Contractor agrees that confidential information disclosed to it under the terms of this Agreement may be disclosed only to its employees or agents who have a need to know such confidential information.

This provision not to disclose confidential information will continue to apply after termination of this Agreement, and until such time as the confidential information becomes public knowledge through no fault of its own. Contractor will report to Covered California any and all unauthorized disclosures of confidential information. Contractor acknowledges that any publication or disclosure of confidential information to others may cause immediate and irreparable harm to Covered California, and if Contractor should publish or disclose confidential information to others, Covered California shall be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without posting a bond.

FF. WAIVER OF BREACH

The waiver by Covered California of any breach by Contractor of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by Contractor.

GG. CONTRACTOR LIMITATIONS

Contractor acknowledges that in governmental contracting even the appearance of a conflict of interest is harmful to the interest of the State. Thus, Contractor agrees to refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with Contractor's fully performing his/her obligations to the State under the terms of this Agreement. Contractor shall inquire about and require disclosure by its staff and subcontractors of all activities that may create an appearance of conflict. In the event that Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor shall submit to Covered California Project Manager a full

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disclosure statement setting forth the relevant details of any activity which the Contractor reasonably believes may have the appearance of a conflict of interest for Covered California's consideration and direction. Failure to promptly submit a disclosure statement setting forth the relevant details for Covered California consideration and direction shall be grounds for termination of this Agreement.

HH. STATEMENT OF ECONOMIC INTERESTS

The Contractor understands that the Contractor's key staff (defined for purposes of this Section as those individuals who fall within the definition of "consultant" pursuant to 2 CCR section 18700.3(a)) performing work under this Agreement may be designated by Covered California as required to file a Form 700, Statement of Economic Interest with Covered California. If, during the term of this agreement, any key staff are added to work on this Agreement, such staff must file the Form 700 with Covered California.

The Contractor understands that the Contractor's key staff performing work under this Agreement may be required to file a Form 700 Statement of Economic Interest with Covered California as follows:

1. Prior to commencing work under the contract;
2. Annually thereafter while remaining a consultant as defined in the regulations cited above (usually by April 1 of each subsequent year); and
3. Within 30 days of ceasing to be such a consultant to Covered California.

II. ETHICS TRAINING

All Contractor's key staff who file a Form 700 must complete the California Attorney General's Ethics Training Course for State Officials, unless they have previously taken an equivalent ethics training course through another state agency or the Legislature during the required time period, as follows:

1. Prior to commencing any work under the contract; and
2. At least once every two calendar years thereafter during which he/she remains a consultant/contractor employee, as defined above, to Covered California.