Viral Load

STATE OF CALIFORNIA
STANDARD AGREEMENT
STD 213 (DHS Rev 7/04)

29401

REGISTRATION NUMBER	AGREEMENT NUMBER
4260100596859	05-45210

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

STATE AGENCY'S NAME (Also referred to as CDHS, DHS, or the State)
California Department of Health Services

CONTRACTOR'S NAME (Also referred to as Contractor)
City of Long Beach

2. The term of this Agreement is: July 1, 2005 through June 30, 2008

3. The maximum amount of this Agreement is: $ 540,000 Five Hundred Fouty Thousand Dollars.

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

Exhibit A – Scope of Work	4 pages
Exhibit B – Budget Detail and Payment Provisions	4 pages
Exhibit B, Attachment I – Invoice Formant	1 page
Exhibit B, Attachment II – HIV-1 Viral Load Test Voucher (Sample)	1 page
Exhibit C * – General Terms and Conditions	GTC 304
Exhibit D (S) – Special Terms and Conditions (Attached hereto as part of this agreement)	18 pages
Exhibit E – Additional Provisions	2 pages
Exhibit F – Contractor's Release	1 page

APPROVED AS TO FORM
8/10, 2005
ROBERT E. SHANNON, City Attorney
BY _____
SENIOR DEPUTY CITY ATTORNEY

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

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

CONTRACTOR

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

BY *(Authorized Signature)* _____ DATE SIGNED *(Do not type)* 9/2/05

PRINTED NAME AND TITLE OF PERSON SIGNING
Gerald R. Miller, City Manager

ADDRESS
C/O Mimi Lachica, MA, Microbiologist Supervisor, Long Beach Public Health Laboratory, 2525 Grand Avenue, Room 260, Long Beach, CA 90815

STATE OF CALIFORNIA

AGENCY NAME
California Department of Health Services

BY *(Authorized Signature)* _____ DATE SIGNED *(Do not type)* 10-11-05

PRINTED NAME AND TITLE OF PERSON SIGNING
Terri L. Anderson, Chief, Contracts and Purchasing Services Section

ADDRESS
1501 Capitol Avenue, Suite 71.2101, MS 1403, P.O. Box 997413
Sacramento, CA 95899-7413

California Department of General Services Use Only

This contract exempt from DGS approval per Chapter 36 / Stats of 2005 Item 4260-111-001 (AIDS)

☐ Exempt per:

Exhibit A
Scope of Work

1. Service Overview

Contractor agrees to provide to the Department of Health Services (DHS) the services described herein.

Under the Department's HIV Therapeutic Monitoring Program (TMP), the Contractor shall conduct Viral Load Tests (VLT) to determine the quantity of HIV–1 (RNA copies/ml) in the blood of AIDS Drug Assistance Program (ADAP)-eligible individuals in the following three categories:

[redacted]

Exhibit A
Scope of Work

B. Direct all inquiries to:

Department of Health Services	**Contractor**
Office of AIDS Early Intervention Section Attention: Toni Post MS 7700 P.O. Box 997426 Sacramento, CA 95899-7426 Telephone: (916) 449-5970 Fax: (916) 449-5959 E-mail: Tpost@dhs.ca.gov	City of Long Beach Long Beach County Public Health Laboratory Attention: Bruce Fujikawa Laboratory Director 2525 Grand Avenue, Room 260 Long Beach, CA 90815 Telephone: (562) 570-4077 Fax: (562) 570-4070 E-mail: Brfujik@ci.long-beach.ca.us

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

5. Services to be Performed

Contractor shall perform the following services:

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

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

C. The number of tests performed is not to exceed 1,800 tests per contract year. This number has been determined by the Office of AIDS based on the number of tests requested by and awarded to EIP and LHJ sites. The client's medical provider will determine the number of tests per individual and the frequency of testing. However, the EIP or LHJ may, in response to local demand, establish a limit or guideline for the number of free, prepaid tests a client may receive each year through the VLT program. The Office of AIDS may adjust the number of tests awarded to each EIP/LHJ upward or downward during the term of the contract.

D. After authorization by the Office of AIDS, participating EIP and LHJ sites will submit specimens to the Local Public Health Laboratory in their county. The Contractor will make all necessary arrangements for specimen processing (only if processing is not currently implemented at EIP/LHJ sites) and transport to the Contractor's VLT laboratory.

Exhibit A
Scope of Work

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

F. The Contractor shall select one of the three commercially available test kits: Roche PCR, Bayer-bDNA, or bioMerieux NucliSens.

[redacted]

Exhibit A
Scope of Work

L. The Contractor shall participate in a periodic statewide proficiency-testing program, administered by the VRDL. The proficiency program will consist of testing a panel of 6 standardized samples up to three times per year (total of 18 sample tests). This testing will be performed and reimbursed by the same mechanism as all other VLT tests at $100 per test.

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

N. The Office of AIDS and the Viral and Rickettsial Disease Laboratory reserve the right to modify the assignment of counties based on program priorities.

6. Allowable Informal Scope of Work Changes

A. Changes and revisions to the Scope of Work contained in the agreement, utilizing the **"allowable cost payment system"**, may be proposed by the Contractor in writing. All requested changes and revisions are subject to the approval of the State. Failure to notify the State of proposed revisions to the Scope of Work may result in an audit finding.

B. The State will respond, in writing, as to the approval or disapproval of all such requests for changes or revisions to the Scope of Work within 30 calendar days of the date the request is received in the program. Should the State fail to respond to the Contractor's request within 30 calendar days of receipt, the Contractor's request shall be deemed approved.

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

Exhibit B
Budget Detail and Payment Provisions

1. Invoicing and Payment

A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates and/or allowable costs specified herein

B. Invoices shall include the Agreement Number and shall be submitted not more frequently than monthly in arrears to:

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

C. Invoices shall:

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

D. **Rates Payable**

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

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

2) Reimbursement will be on the basis of a fixed price per Viral Load Test including a small number of other specifically approved expenditures (e.g. required equipment or commercial proficiency programs) that require prior written authorization. Each test result shall be reported to the submitter within 5-10 working days and shall be reported to VRDL along with the required voucher data. Voucher data must be submitted on a monthly basis to VRDL within 30 working days after the end of the reporting period. Monthly invoices must be itemized by a voucher number.

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

Exhibit B
Budget Detail and Payment Provisions

3) The maximum number of regional client Viral Load Tests performed by the Contractor shall not exceed 1,800 per contract year.

   1,800 tests x $100.00 per test = $180,000.00 per contract year

4) If specifically approved expenditures for necessary equipment purchases (for which a formal amendment will be submitted), proficiency program costs, or additional VLT-related tests referenced in this exhibit are charged to this agreement, the maximum number of client Viral Load Tests will be reduced so that all costs remain within the $180,000 budget per contract year.

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

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

2. Budget Contingency Clause

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

[redacted]

Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards.

Exhibit B
Budget Detail and Payment Provisions

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

5. Timely Submission of Final Invoice

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

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

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

6. Expense Allowability / Fiscal Documentation

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

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

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

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

7. Recovery of Overpayments

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

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

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

Exhibit B
Budget Detail and Payment Provisions

B. The State reserves the right to select which option will be employed and the Contractor will be notified by the State in writing of the claim procedure to be utilized.

C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor.

MUST BE PRINTED ON AGENCY LETTERHEAD

City of Long Beach
05-45210

Exhibit B, Attachment I

INVOICE FORMAT

OA Tracking #:

OA Date Stamp

Contractor Name (as it appears on the STD 213)

Mailing Address

Contract Number

Period of Service (month / year)

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

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

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

Authorized Signature

Date

Print name of authorized signature

Title

OA Review:

(Initial & Date)

No.	Client URN	Voucher No.	Date Specimen Tested	Date of Result
1	KUNP1109722	0000101	Date	Date
2	RBSM0457411	0000102		
3	GASG1215591	0000001		
4	ENVD0805652	0000103		

FOR OA USE ONLY

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

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

State of California—Health and Human Services Agency

Department of Health Services
Office of AIDS
Early Intervention Section

FOR USE IN FY 2004/2005 ONLY

HIV-1 VIRAL LOAD TEST VOUCHER

Complete fully and submit with each Viral Load Test sample.

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

TEST REQUESTED:
Roche PCR: ☐ Standard ☐ Ultrasensitive
Bayer: ☐ bDNA
bioMerieux: ☐ NucliSens

AUTHORIZED LOCATION

Address (number, street)

City

VLT Location Number (4 digits) | Submitting Physician

___ ___ ___ ___

SPECIMEN

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

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

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

ETHNICITY *(select only one)*
☐ (100) White (non-Hispanic)
☐ (200) Black (non-Hispanic), African-American
☐ (300) Hispanic
☐ (400) Asian, Pacific Islander
☐ (500) Native American/Alaskan
☐ (600) Other
☐ (999) Unknown

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

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

PATIENT MEDICAL RECORD NUMBER

DATE OF BIRTH (mm/dd/yyyy)
__ __/__ __/__ __ __ __

GENDER *(select only one)*
☐ (1) Male ☐ (3) Transgender (Male to Female)
☐ (2) Female ☐ (4) Transgender (Female to Male)
☐ (9) Unknown

ZIP CODE OF PRIMARY RESIDENCE ☐ (99999) Unknown ☐ (99997) Homeless
__ __ __ __ __

INDIVIDUAL *ANNUAL* FEDERAL ADJUSTED GROSS INCOME
$

CLIENT CATEGORY *(select only one)*
Early Intervention Program (EIP) client ☐ (1)
Non-EIP client in non-Title I area ☐ (2)
Non-EIP client in Title I area ☐ (3)

CLIENT UNIQUE RECORD NUMBER (URN)—Unencrypted
Consists of eleven capital letters and numbers composed as follows:

Character	Description
1	First letter of legal *first name; if unavailable, use digit 9
2	Third letter of legal *first name; if unavailable, use middle initial; if no middle initial, use digit 9
3	First letter of legal *last name; if unavailable, use digit 9
4	Third letter of legal *last name; if unavailable, use digit 9
5–6	Month of birth as two digits
7–8	Day of birth as two digits
9–10	Year of birth as two digits; if date of birth not available, use 999999 for characters 5–10
11	One digit gender code (1=Male, 2=Female, 3 or 4=Transgender, 9=Unknown)

*No aliases or nicknames allowed.

Client URN (Unencrypted—11 characters)
(Required for ALL clients.)
___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___

EIP client number *(Required for EIP clients only.)*
___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___

FOR LABORATORY USE ONLY	
Laboratory accession number	
Date specimen was received __ __/__ __/__ __ __ __	Time specimen was received ☐ a.m. ☐ p.m. __ __:__ __
Date result was reported __ __/__ __/__ __ __ __	Microbiologist/technologist initials
Standard (RNA copies/ml)	Ultrasensitive (RNA copies/ml)
bDNA (RNA copies/ml)	NucliSens (RNA copies/ml)

Voucher Number: 700000

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

GTC 304

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 recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 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, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (Pub. Contract Code §§ 10233, 10308.5, 10354)

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

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

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 DHS and which result directly or indirectly from this agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.

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

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

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

[redacted]

A. Early Intervention Program (EIP) clients at Office of AIDS (OA)-funded EIP sites;

B. Non-EIP clients in non-Title I areas;

C. Non-EIP clients in Title I areas.

2. Service Location

The services shall be performed at 2525 Grand Avenue, Room 260, Long Beach, California. The specimens shall be received from OA funded EIP sites/or Local Health Jurisdiction sites including, but not limited to, City of Long Beach.

3. Service Hours

The services shall be provided during normal Contractor working hours, Monday through Friday, excluding national holidays.

4. Project Representatives

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

Department of Health Services	Contractor

[redacted]

9. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior DHS 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 DHS program contract manager all requests for disclosure of such identifying information not emanating from the client or person.

d. [redacted]

therefore. Should the Contractor disagree with the Branch Chief's decision, the Contractor may appeal to the second level.

(2) The Contractor must prepare a letter indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the letter a copy of the Contractor's original statement of dispute with any supporting documents and a copy of the Branch Chief's response. This letter shall be sent 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 funding this agreement 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 funding this agreement or his/her designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter.

b. If the Contractor wishes to appeal the decision of the Deputy Director of the division funding this agreement or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5, commencing with Section 251, California Code of Regulations.)

c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.

d. Unless otherwise stipulated by DHS, dispute, grievance and/or appeal correspondence shall be directed to the DHS program contract manager.

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

organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". *The $300,000 threshold identified in this paragraph will increase to $500,000 for federal fiscal years ending after December 31, 2003.* 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 DHS 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 $300,000 or more in federal funds for the year covered by the audit report. *The $300,000 threshold identified in this paragraph will increase to $500,000 for federal fiscal years ending after December 31, 2003.*

d. Two copies of the audit report shall be delivered to the DHS 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 DHS program contract manager shall forward the audit report to DHS' Audits and Investigations Unit.

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 DHS 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.

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, DHS shall act upon the proposal within 60 days after receipt of the written proposal. DHS 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, DHS will initiate an amendment to this

Unless waived or otherwise stipulated in this agreement, DHS 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 DHS 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.)

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

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, DHS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.

b. As used herein, fringe benefits do not include:

(1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
(2) Director's and executive committee member's fees.
(3) Incentive awards and/or bonus incentive pay.
(4) Allowances for off-site pay.
(5) Location allowances.
(6) Hardship pay.
(7) Cost-of-living differentials

c. Specific allowable fringe benefits include:

(1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written

(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 DHS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

Exhibit E
Additional Provisions

1. Contract Amendments

Should either party, during the term of this agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the State's official agreement amendment process. No amendment will be considered binding on either party until it is formally approved by the State.

2. Cancellation / Termination

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

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

C. Contractor shall be entitled to payment for all allowable costs authorized under this agreement, including authorized non-cancelable obligations incurred up to the date of termination or cancellation, provided such expenses do not exceed the stated maximum amounts payable.

3. Avoidance of Conflicts of Interest by Contractor

A. The Contractor agrees that all reasonable efforts will be made to ensure that no conflict of interest exists between its officers, agents, employees, consultants or members of its governing body.

B. The Contractor shall prevent its officers, agents, employees, consultants or members of its

Exhibit E
Additional Provisions

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

Exhibit F

Contractor's Release

Instructions to Contractor:

With final invoice(s) submit one (1) original and two (2) copies. The original must bear the original signature of a person authorized to bind the Contractor. The additional copies may bear photocopied signatures.

Submission of Final Invoice

Pursuant to **contract number** _____ entered into between the State of California Department of Health Services (DHS) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via **invoice number(s)** _____, in the **amount(s) of $** _____ and **dated** _____.
If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment, will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies or products offered or used in the performance of the above referenced contract meets or exceeds the minimum percentage of recycled material, as defined in Public Contract Code Sections 12161 and 12200.

Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by DHS or purchased with or reimbursed by contract funds)

Unless DHS has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another DHS agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to DHS, at DHS's expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING TO THE FINAL INVOICE

Contractor's Legal Name (as on contract): _____

Signature of Contractor or Official Designee: _____ Date: _____

Printed Name/Title of Person Signing: _____

DHS Distribution: Accounting (Original) Program CMU contract file