

Exhibit A
Scope of Work

1. The Humboldt County Agricultural Commissioner's Office (CAC) shall perform defined cannabis cultivation compliance inspections for the California Department of Cannabis Control (DCC), Compliance Division (Division). Inspections shall be in accordance with the Medicinal and Adult Use of Cannabis Regulation and Safety Act (Act), Section 26066.1, Division 10 of the Business and Professions Code and implementing regulations; inspections shall include the following commercial cultivation license types:

Specialty Cottage Outdoor
Specialty Cottage Indoor
Specialty Cottage Mixed-Light Tier 1
Specialty Cottage Mixed-Light Tier 2
Specialty Indoor
Specialty Outdoor
Specialty Mixed-Light Tier 1
Specialty Mixed-Light Tier 2
Small Outdoor
Small Indoor
Small Mixed-Light Tier 1
Small Mixed-Light Tier 2
Medium Indoor
Medium Outdoor
Medium Mixed-Light Tier 1
Medium Mixed-Light Tier 2
Large Outdoor
Large Indoor
Large Mixed-Light Tier 1
Large Mixed-Light Tier 2
Processor
Nursery

2. The services shall be performed in Humboldt County at Licensed commercial cannabis cultivation sites.
3. Services shall be performed 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state holidays.

4. **Project Representatives**

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

State Agency

Name: Zarha Ruiz, Branch Chief ECMSB
Division/Branch: Compliance Division/Environmental Compliance & Mfg. Safety Branch (EMCSB)
Address: 2920 Kilgore Road, Rancho Cordova, CA 95670
Phone Number: (916) 251-4617
Email Address: compliance.admin@cannabis.ca.gov

Contractor

Name: Weylan Shaw
Unit/Branch: Agricultural Commissioner's Office
Address: 5630 Broadway Street, Eureka, CA 95503
Phone Number: (707) 441-5266
Email Address: wshaw@co.humboldt.ca.us

B. Direct all inquiries to:

<u>Department of Cannabis Control</u>	<u>Humboldt County Ag Commissioner</u>
Compliance Division Margarita Rabago 2920 Kilgore Rd Sacramento, CA 95670 (916) 251-4606 Fax: (916) 851-3636 compliance.admin@cannabis.ca.gov	Weylan Shaw Agricultural Commissioner Office 5630 Broadway Street Eureka, CA 95503 (707) 441-5266 wshaw@co.humboldt.ca.us

C. All payments from DCC to the Contractor; shall be sent to the following address:

<u>Remittance Address</u>
Humboldt County Agricultural Commissioner Attention: Accounts Receivable 5630 Broadway Street Eureka, CA 95503 (707) 441-5260

D. Either party may make changes to the information above by giving written notice to the other party. Said changes may require an amendment to this agreement.

5. Detailed description of work to be performed and duties of all parties.

CAC Responsibilities

The CAC shall:

- A. Perform compliance inspections of state-licensed commercial cannabis cultivators, nurseries, and processors in compliance with the Act and DCC regulations as outlined in this agreement using the protocols and forms provided by the Division.
- B. Be responsible for scheduling inspections, ensuring that all contracted inspections are completed, and all required documentation is submitted, either in hard copy and/or electronically to the Division.
- C. Agrees to accept an inspection assignment from the Division which may, at times, be with short notice.
- D. Must be at a level with the ability to provide testimony in an administrative, criminal, civil, or other proceeding, as needed.
- E. Obtain Marijuana Enforcement Tracking Reporting & Compliance (MetrC) viewer access if requested by DCC.
- F. Review MetrC inventory of licenses for each site to be inspected at maximum two (2) days prior to actual inspection if requested by DCC.

Compliance Division Inspection Requirements

An inspection is site-based, including all licenses owned by a single business at a single location. Inspection of a site may include more than one license and is considered one (1) inspection. An inspection shall include all of the following:

- A. Appropriately completed, state provided DCC inspection form(s).
- B. Issue a Notice to Comply in person, when requested by the Division.
- C. Submit the DCC inspection form(s) to the Division within five (5) business days of completing the inspection.
- D. The Division shall provide to the CAC designated staff, field inspection training, and required inspection forms and documentation, as determined by the Division.
- E. The Division shall assign an Environmental Scientist as a point of contact and resource to the CAC for program support and to provide a local presence, when requested, for meetings or relevant enforcement events.
- F. The Division assigned Environmental Scientist will provide a list of sites for inspection and licensing documents for each active license held at those sites to the CAC on a schedule determined by the state point of contact.
- G. The Division shall reimburse the CAC not more often than monthly, and in arrears.

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 specified herein, which is attached hereto and made a part of this Agreement.
- B. Unless mutually agreed, monthly invoices must be submitted within 30 days from the end of each month in which services were rendered. Invoices must include the Agreement number and submitted to the Program Contract Manager listed in this contract.
- C. The CAC shall submit itemized invoices on County letterhead using the template provided. Invoices shall be submitted monthly, no later than thirty (30) calendar days after the end of the reporting period covered by the invoice.

All invoiced expenses must fall within the parameters of the Scope of Work and Budget Worksheet and must be directly related to administering and conducting Division program-related activities.

Invoices shall be sent via email to: compliance.admin@cannabis.ca.gov. Questions about invoicing/reimbursement shall be directed to Margarita Rabago via email at: compliance.admin@cannabis.ca.gov or by calling (916) 251-4606.

- D. Invoices shall:
 - 1. Be prepared on Contractor letterhead and must be signed by an authorized official, employee or agent certifying that the expenditures claimed represent activities performed and are in accordance with Exhibit A.
 - 2. Be submitted to DCC either electronically or in hard copies.
 - 3. Identify the billing and/or performance period covered by the invoice and reference the DCC Contract Number.
 - 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 DCC.
 - 5. Itemize sites inspected, including at a minimum: site name, date inspected, and number of licenses at the site. If necessary for identification of sites inspected, license numbers, addresses, and parcel numbers may be required by DCC for verification of the invoice.

E. Amounts Payable

The amounts payable under this agreement shall not exceed:

\$127,600.00 for the budget period of 11/01/2023 (or upon Execution) through 06/30/2026.

<u>AMOUNT PER INSPECTION</u>	
<u>Licenses on a Site (At the Same Location AND Belonging to the Same Business)</u>	
1-10	\$400.00 Per Inspection
11-30	\$500.00 Per Inspection
31-60	\$600.00 Per Inspection
61+	\$700.00 Per Inspection
<u>Total Contract Amount</u>	
\$127,600.00	

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

4. Timely Submission of Final Invoice

A final undisputed invoice shall be submitted for payment no more than thirty (30) 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", indicating that all payment obligations of the State under this agreement have ceased and that no further payments are due or outstanding. 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.

5. Expense Allowability / Fiscal Documentation

- A. Invoices, received from the Contractor and accepted 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 DCC upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.
- C. If the allowability 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.

6. Recovery of Overpayments

- A. Contractor agrees that claims based upon the terms of this agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by the State 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 agreeable between the State and the Contractor.
- B. The State reserves the right to select which option as indicated above in paragraph A 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, beginning 30 days after Contractor's receipt of the State's demand for repayment.
- D. If the Contractor has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If the Contractor loses the final administrative appeal, Contractor shall repay, to the State, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues from the Contractor's first receipt of State's notice requesting reimbursement of questioned audit costs or disallowed expenses.

GTC 04/2017

Exhibit C
General Terms and Conditions

1. APPROVAL: This Agreement if 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 retentions 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 deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.) the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

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 04/2017 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 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 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 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 Profession Code. (PCC 10344 (e).)

Exhibit D
Special Terms and Conditions

1. Cancellation

- A. This agreement may be cancelled by DCC **without cause** upon 30 calendar days advance written notice to the Contractor.
- B. DCC reserves the right to cancel or terminate this agreement immediately for cause. The Contractor may submit a written request to terminate this agreement only if DCC substantially fails to perform its responsibilities as provided herein.
- C. The term “for cause” shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this agreement.
- D. Agreement cancellation or termination shall be effective as of the date indicated in DCC’s notification to the Contractor. The notice shall stipulate any final performance, invoicing or payment requirements.
- E. Upon receipt of a notice of cancellation or termination, the Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent agreement costs.
- F. In the event of early cancellation or termination, the Contractor shall be entitled to compensation for services performed satisfactorily under this agreement and expenses incurred up to the date of cancellation and any non-cancelable obligations incurred in support of this agreement.

2. Intellectual Property Rights

A. Ownership

- 1) Except where DCC has agreed in a signed writing to accept a license, DCC shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or DCC and which result directly or indirectly from this Agreement.
- 2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author’s rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
- 3) For the purposes of the definition of Intellectual Property, “works” means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible

medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.

- 4) In the performance of this Agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of DCC's Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of DCC's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of DCC. **Except as otherwise set forth herein, neither the Contractor nor DCC shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to DCC, Contractor agrees to abide by all license and confidentiality restrictions applicable to DCC in the third-party's license agreement.
- 5) Contractor agrees to cooperate with DCC in establishing or maintaining DCC's exclusive rights in the Intellectual Property, and in assuring DCC's sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to DCC all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or DCC and which result directly or indirectly from this Agreement or any subcontract.
- 6) Contractor further agrees to assist and cooperate with DCC in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce DCC's Intellectual Property rights and interests.

B. Retained Rights / License Rights

- 1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DCC and which result directly or indirectly from this Agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Agreement. Contractor hereby grants to DCC, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.
- 2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of DCC or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

C. Copyright

- 1) Contractor agrees that for purposes of copyright law, all works [as defined in Section a, subparagraph (2)(a)] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to DCC to any work product made, conceived, derived from, or reduced to practice by Contractor or DCC and which result directly or indirectly from this Agreement.
- 2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DCC and which result directly or indirectly from this Agreement, shall include DCC's notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2007, etc.], Department of Cannabis Control. This material may not be reproduced or disseminated without prior written permission from the Department of Cannabis Control." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

D. Patent Rights

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

E. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining DCC's prior written approval; and (ii) granting to or obtaining for DCC, without additional compensation, a license, as described in Paragraph 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 these terms is unattainable, and DCC 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 DCC.

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 DCC 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 DCC 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) DCC 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 DCC and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of DCC's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private

performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DCC and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. DCC reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against DCC.

- 2) Should any Intellectual Property licensed by the Contractor to DCC under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve DCC's right to use the licensed Intellectual Property in accordance with this Agreement at no expense to DCC. DCC shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for DCC to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, DCC shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- 3) Contractor agrees that damages alone would be inadequate to compensate DCC for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges DCC would suffer irreparable harm in the event of such breach and agrees DCC shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

H. Federal Funding

In any agreement funded in whole or in part by the federal government, DCC may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the Agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

I. Survival

The provisions set forth herein shall survive any termination or expiration of this Agreement or any project schedule.

3. Confidentiality of Information

- A. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.
- B. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.

- C. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DCC Division Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.
- D. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than DCC without prior written authorization from the DCC Division Contract Manager, except if disclosure is required by State or Federal law.
- E. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.
- F. As deemed applicable by DCC, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

4. **Dispute Resolution Process**

A Contractor grievance exists whenever there is a dispute arising from DCC's action in the administration of an agreement. If there is a dispute or grievance between the Contractor and DCC, the Contractor must seek resolution using the procedure outlined below.

- A. The Contractor should first informally discuss the problem with the DCC Division Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the Division Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
- B. When appealing to the second level the Contractor must prepare an appeal indicating the reasons for disagreement with the Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized, or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized, or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal. The decision rendered by the Deputy Director or his/her designee shall be the final administrative determination of the Department.
- C. Unless otherwise stipulated in writing by DCC, all dispute, grievance and/or appeal correspondence shall be directed to the DCC Division Contract Manager.
- D. There are organizational differences within DCC's funding, and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the DCC Division Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

5. **Excise Tax**

The State of California is exempt from federal excise taxes, and no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

Exhibit E
Additional Provisions

CONTRACT AND SUBCONTRACT COMPLIANCE REQUIREMENTS

The Contractor shall ensure its officers, agents and employees will fully cooperate with any/all investigations conducted by the Department of Cannabis Control's Equal Employment Opportunity and Human Resources Offices and will require the same of any subcontractors or consultants used pursuant to this agreement.

UNFAIR PRACTICES ACT

Contractor hereby certifies that he/she will comply with the requirements of [Section 17200 of the Business and Professions Code](#).

CONFLICT OF INTEREST

Contractor certifies that its employees and the officers of its governing body shall avoid any actual or potential conflicts of interest, and that no officer or employee who exercises any functions or responsibilities in connection with this Agreement shall have any personal financial interest or benefit which either directly or indirectly arises from this Agreement.

Contractor shall establish safeguards to prohibit its employees or its officers from using their positions for a purpose which could result in private gain, or which gives the appearance of being motivated for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

INSURANCE REQUIREMENTS

Contractor shall comply with all requirements outlined in the (1) General Provisions section and (2) Contract Insurance Requirements outlined in this section. No payments will be made under this contract until Contractor fully complies with all requirements.

1. General Provisions Applying to All Policies

- A. Coverage Term – Coverage needs to be in force for the complete term of the contract. If insurance expires during the term of the contract, a new certificate must be received by the State at least thirty (30) days prior to the expiration of this insurance. Any new insurance must comply with the original contract terms.
- B. Policy Cancellation or Termination & Notice of Non-Renewal – Contractor is responsible to notify the State within five (5) business days of any cancellation, non-renewal or material change that affects required insurance coverage. New certificates of insurance are subject to the approval of the Department of General Services and the Contractor agrees no work or services will be performed prior to obtaining such approval. In the event the Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event, subject to the provisions of this contract.
- C. Premiums, Assessments and Deductibles – Contractor is responsible for any premiums, policy assessments, deductibles or self-insured retentions contained within their insurance program.
- D. Primary Clause – Any required insurance contained in this contract shall be primary, and not excess or contributory, to any other insurance carried by the State.
- E. Insurance Carrier Required Rating – all insurance carriers must carry an AM Best rating of at least an A minus (A-) with a financial category rating of no lower than VI. If the Contractor is self-

insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.

- F. Endorsements – any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
- G. Inadequate Insurance – Inadequate or lack of insurance does not negate the Contractor's obligation under the contract.
- H. Available Coverages/Limits – all coverage and limits available to the Contractor shall also be available and applicable to the State.
- I. Satisfying an SIR – All insurance required by this contract must allow the State to pay/and or act as the Contractor's agent in satisfying any self-insured retention (SIR). The choice to pay and/or act as the Contractor's agent in satisfying any SIR is at the State's discretion.
- J. Use of Subcontractors – In the case of Contractor's utilization of subcontractors to complete the contracted scope of work, the Contractor shall include all subcontractors as insureds under Contractor's insurance or supply evidence of subcontractor's insurance to the State equal to policies, coverages and limits required of the Contractor.

2. Contractor Insurance Requirements

Contractor shall display on an Acord Certificate of Insurance evidence of the following coverages:

- A. Commercial General Liability Insurance
Contractor shall maintain general liability on an occurrence form with limits not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined with a \$2,000,000.00 annual policy aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom a claim is made, or suit is brought subject to the Contractor's liability. The policy must be endorsed to name **The State of California, its officers, agents, and employees as additional insured, but only with respect to work performed under this contract.**

- B. Automobile Liability
Contractor shall maintain business automobile liability insurance for limits not less than \$1,000,000 combined single limit. Such insurance shall cover liability arising out of a motor vehicle including owned, hired, and non-owned motor vehicles.

The policy must be endorsed to name **The State of California, its officers, agents, and employees as additional insured, but only with respect to work performed under this contract.**

- C. Workers Compensation Insurance
Contractor shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of this contract. In addition, employer's liability limits of \$1,000,000.00 are required. By signing the contract, Contractor acknowledges compliance with this regulation. **A Waiver of Subrogation or Right to Recover endorsement in favor of the State of California must be attached to the certificate.**

D. Self-Insurance

In lieu of maintaining commercial insurance coverage, Contractor may adopt alternative risk management programs, which the State of California determines to be reasonable, and which shall not have a material adverse impact on reimbursement from third-party payers, including, without limitation, to self-insure in whole or in part individually or in connection with other institutions, or to establish to participate in other alternative risk management programs.

- i. Satisfying an SIR – All insurance required by this contract must allow the State to pay and/or act as the contractor's agent in satisfying any self-insured retention (SIR). The choice to pay and/or act as the contractor's agency in satisfying any SIR is that of the State's discretion.
- ii. Inadequate Insurance – Inadequate or lack of insurance does not negate the Contractor's obligations under the contract.
- iii. Available Coverages/Limits – All coverage and limits available to the Contractor shall also be available and applicable to the State.

REPORTS

If this agreement is for the production of a report, pursuant to Government Code, Section 7550, Contractor will include the dollar amount and agreement number of all contracts relating to preparation of this report.

FORCED, CONVICT, AND INDENTURED LABOR

No foreign-made equipment, materials, or supplies furnished to the State pursuant to this contract may be produced in whole or in part by forced labor, convict labor, or indentured labor.

FORCE MAJEURE

Except for defaults of any subcontractors, neither party shall be responsible for any delay in or failure of performance from acts beyond the control of the offending party. Such acts shall include, but shall not be limited to, acts of God, fire, flood, earthquake, pandemic, other natural disaster, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact. If a delay or failure in performance by the Contractor arises out of a default of its subcontractor, and if such default of its subcontractor, causes beyond the control of both the Contractor shall not be liable for damages of such delay or failure, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

AMERICAN DISABILITIES ACT

By signing this contract, the contractor assures the State that it complies with the American Disabilities Act (ADA) of 1990 ([42 USC § 12101 et.seq.](#)), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

NATIONAL LABOR RELATIONS CERTIFICATION

By signing the contract, the Contractor swears under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal Court has been issued against the contractor within the immediately preceding two (2) year period because of the Contractor's failure to comply with an order of a Federal Court, which orders the Contractor to comply with an order of the National Labor Relations Board.

AGREEMENT EXECUTION

Unless otherwise prohibited by state law, regulation, or Department or Contractor policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by all parties.