Work for Hire Agreement

This Agreement is made by and between [State of California Agency/Department] located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and [name and address of independent contractor; hereinafter “Contractor”]. The Effective Date of this Agreement is the date that this Agreement is reviewed and approved by the relevant State of California officials.

# RECITALS:

1. [Name of Agency or Department] has entered into an agreement with Contractor for specified services;
2. It is anticipated that the agreement will result in the development of materials which are governed by the Copyright Act of 1976; and
3. The parties deem it necessary to assign ownership rights in the materials developed pursuant to this agreement (thereinafter the “Work”).

# NOW IT IS AGREED AS FOLLOWS:

1. For valuable consideration, the sufficiency of which is hereby acknowledged, Contractor agrees to deliver the Work in a manner and form satisfactory to [Name of Agency or Department]. It will be within the [Name of Agency or Department] sole discretion as to whether the Work is satisfactory.
2. Contractor expressly acknowledges that the Work contributed by Contractor is being specially ordered and commissioned by [Name of Agency or Department]. The Work contributed by Contractor shall be considered a "work made for hire" as defined by the copyright laws of the United States. [Name of Agency or Department] shall be the sole and exclusive owner and copyright holder of the Work. If for any reason the Work is determined at any time not to qualify as a "work made for hire", Contractor hereby irrevocably transfers and assigns to [Name of Agency or Department] all right, title and interest therein, including all copyrights, as well as all renewals and extensions.
3. Contractor agrees that [Name of Agency or Department] may make any changes or additions to the Work, including but not limited to the preparation of derivative works which [Name of Agency or Department] in its sole discretion may consider necessary, and may engage others to make changes to the Work, with or without attribution to Contractor.
4. Contractor represents that, except with respect to material furnished to Contractor by [Name of Agency or Department], Contractor is the sole author of the Work, which is not copied in whole or in part from any other work. Contractor further represents that the Work does not violate the intellectual property rights of any person, firm or entity.
5. **Release and Discharge.** Contractor releases and discharges [Name of state agency or department] from any and all claims and demands arising out of, or in connection with, any use of the Work, including but not limited to, any and all claims of libel, moral rights and invasion of privacy, and/or any claims under the Visual Artists Rights Act. Contractor realizes that he or she cannot withdraw their consent after executing this Agreement, and acknowledges that this Agreement is binding on Contractor and his or her heirs, legal representatives and other assigns.
6. **Indemnification:** Contractor agree to indemnify, defend and save harmless the [NAME OF STATE AGENCY OR DEPARTMENT], its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys’ fees), and losses arising in any way as a result of a violation of this Agreement or acts or omissions of Contractor or any of Contractor’s affiliates, agents, subcontractors, employees, or representatives. Such defense and payment will be conditioned upon the following:
7. [NAME OF STATE AGENCY OR DEPARTMENT] will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
8. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys’ fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
9. **Severability:** The parties hereto agree that if any provision of this Agreement is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Agreement shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
10. **Assignment:** This Agreement shall not be assignable by the Contractor in whole or in part without the written consent of [NAME OF STATE AGENCY OR DEPARTMENT]. In the event [NAME OF STATE AGENCY OR DEPARTMENT] approves an assignment in writing, the Contractor remains jointly and severally liable for the obligations set forth in this Agreement.
11. **Waiver of Rights:** Any action or inaction by [NAME OF STATE AGENCY OR DEPARTMENT] or the failure of [NAME OF STATE AGENCY OR DEPARTMENT] on any occasion, to enforce any right or provision of this Agreement shall not be construed to be a waiver by [NAME OF STATE AGENCY OR DEPARTMENT] of its rights hereunder and shall not prevent [NAME OF STATE AGENCY OR DEPARTMENT] from enforcing such provision or right on any future occasion. The rights and remedies of [NAME OF STATE AGENCY OR DEPARTMENT] hereunder are cumulative and are in addition to any other rights or remedies that [NAME OF STATE AGENCY OR DEPARTMENT] may have in law or equity.
12. **No License**: No license, either express or implied, is granted hereby to Contractor, with respect to the Work. Contractor agrees that The Work is and will remain the sole property of [Name of Agency or Department].
13. **No Intellectual Property Rights in the Work.** Contractor will not apply for or obtain any intellectual property protection in any of the Work or related derivative works. All intellectual property rights relating to any materials of any kind developed by Contractor using the Work, and all rights in any derivative works, belong exclusively to [Name of Agency or Department].
14. **Entire Agreement; Duplicate Originals**: This Agreement constitutes the entire agreement with respect to the Work disclosed herein and supersedes all prior or contemporaneous oral or written agreements concerning the Work. This agreement may be executed in duplicate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.
15. Modification by Subsequent Agreement: This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them.
16. **Applicable Law:** This Agreement shall be governed by and shall be interpreted in accordance with the laws of the State of California, and venue for any action to enforce the terms of this Agreement will be in Sacramento County, California.
17. **Declaratory Relief:** Contractor acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this Agreement. Accordingly, in addition to any other rights and remedies it may have, [Name of
18. Agency or Department] shall be entitled to obtain declaratory relief from a court of competent jurisdiction preventing or restricting the disclosure or use of the Work, or any other breach of this Agreement.

[Name of Agency or Department]

Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Contractor’s name]

Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By [Authorized Signature] \_\_\_\_\_\_\_\_\_\_\_\_\_\_

**NOTE: This form is to be used in California only with separate legal entities such as corporations and LLCs.**