

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

21-79016-000

PURCHASING AUTHORITY NUMBER (If Applicable)

DSH-4440

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

CONTRACTING AGENCY NAME

Department of State Hospitals

CONTRACTOR NAME

California Health and Recovery Solutions, P.C.

2. The term of this Agreement is:

START DATE

March 1, 2022

THROUGH END DATE

June 30, 2024

3. The maximum amount of this Agreement is:

\$132,357,441.00

One Hundred Thirty-Two Million Three Hundred Fifty-Seven Thousand Four Hundred Forty-One Dollars and Zero Cents

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

Exhibits	Title	Pages
Exhibit A	Scope of Work	10
Exhibit A-1	Program Elements	4
Exhibit B	Budget Detail and Payment Provisions	7
+ - Exhibit B-1	Sample Invoice	1
+ - Exhibit C	General Terms and Conditions - 04/2017	4
+ - Exhibit D	Special Terms and Conditions	9
+ - Exhibit E	Confidentiality and Information Security Provisions (HIPAA Business Associate Agreement)	9
+ - Exhibit G	Insurance Requirements	4

Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

**CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

California Health and Recovery Solutions, P.C.

CONTRACTOR BUSINESS ADDRESS

3911 Sorrento Valley Boulevard, Suite 130

CITY

San Diego

STATE

CA

ZIP

92121

PRINTED NAME OF PERSON SIGNING

Dean Rieger, MD MPH

TITLE

President

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

6/29/22

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**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

Department of State Hospitals

CONTRACTING AGENCY ADDRESS

1215 O Street, MS-1

CITY

Sacramento

STATE

CA

ZIP

95814

PRINTED NAME OF PERSON SIGNING

Robert Horsley

TITLE

Acting Chief of Operations

CONTRACTING AGENCY AUTHORIZED SIGNATURE



DATE SIGNED

6/29/2022

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

WIC Code 4361.6

## **EXHIBIT A**

### **SCOPE OF WORK**

#### **1. CONTRACTED PARTIES:**

- A. California Health and Recovery Solutions, P.C. ("CHRS"), hereafter referred to as Contractor, agrees to provide services (as defined in Section 6) to the Department of State Hospitals (DSH) pursuant to the terms and conditions of this Agreement.

#### **2. SERVICE LOCATION:**

- A. The services shall be performed at various locations throughout California.

#### **3. SERVICE HOURS:**

- A. Contractor shall provide Early Access and Stabilization Services, hereafter referred to as "Services," in jail settings 24 hours per day, seven days per week, to individuals identified by DSH and Contractor to require said services.

#### **4. PROJECT REPRESENTATIVES:**

- A. The project representatives during the term of this Agreement shall be:

<b>DSH Contract Manager:</b>		<b>DSH Administrative Contact:</b>	
Section/Unit: Community Forensic Partnerships Division		Section/Unit: Community Forensic Partnerships Division	
Attention: Melanie Scott, Psy.D Assistant Deputy Director (A)		Attention: Selene Mujica Program Manager	
Address: 1215 O Street, MS-9 Sacramento, CA 95814		Address: 1215 O Street, MS-9 Sacramento, CA 95814	
Phone: (916) 616-5703	Fax: (916) 651-1168	Phone: (916) 651-7913	Fax: (916) 651-1168
Email: Melanie.Scott@dsh.ca.gov		Email: Selene.Mujica@dsh.ca.gov	

<b>CHRS Contract Manager:</b>		<b>CHRS Services Contact:</b>	
Section/Unit:		Section/Unit:	
Attention: Jen Diaz, Regional Vice President IST Operations		Attention: Carin Kottraba, Ph.D., Vice President Mental Health Innovations	
Address: 3911 Sorrento Valley Blvd. Ste 130 San Diego, CA 92121		Address: 3911 Sorrento Valley Blvd. Ste 130 San Diego, CA 92121	
Phone: (209) 204-8670	Fax:	Phone: (858) 805-5429	Fax:
Email: Jennifer.Diaz@Wellpath.us		Email: Carin.Kottraba@Wellpath.us	

Either party may make changes to the contact names or information above by giving written notice to the other party. Said changes shall not require an amendment to this Agreement.

## **5. PROGRAM IMPLEMENTATION FUNDS:**

- A. The DSH shall reimburse Contractor for initial program implementation costs incurred under this Agreement. The implementation costs shall include, but are not limited to:
- i. Psychotropic medications including long-acting injectable medications;
  - ii. Travel funds; and
  - iii. Initial administrative operating expenses and equipment.

## **6. SUMMARY OF WORK TO BE PERFORMED:**

### **A. Overview**

Contractor shall provide Early Access and Stabilization Services to individuals charged with felony offenses and found by the courts to be Incompetent to Stand Trial pursuant to Penal Code section 1370, hereafter referred to as felony incompetent to stand trial ("IST") patients. Services will be provided to felony IST patients awaiting admission into a DSH facility or community-based program who are housed in a county jail. The county jail may or may not host a Jail Based Competency Treatment ("JBCT") program.

### **B. Services to be Performed**

By mutual agreement, in writing, and at the request of DSH, Contractor shall:

1. Establish the Early Access and Stabilization program through engagement and outreach to Sheriffs' Departments;
2. Provide substantive treatment Services, as outlined by DSH, to all felony IST patients referred to the Contractor by DSH;
3. Provide one-to-one clinical engagement to felony IST patients by using Contractor's clinical staff;
4. Provide psychiatric services to felony IST patients including the assessment and identifying of appropriate psychotropic medication, initiation of the psychotropic medication prescription, medication regimen, medication management, and follow-up, including the use of long-acting injectable medications;
5. Provide basic competency education to felony IST patients, as defined in section 7D below.

## **7. CONTRACTOR RESPONSIBILITIES:**

- A. Contractor shall provide Services to felony IST patients not yet admitted into a DSH facility or community-based program. Contractor shall offer a combination of services in a virtual format and in-person. All mental health and competency treatment services will comply with state and federal regulatory requirements, including any DSH Early Access and Stabilization program policies and procedures, Title 15 of the California Code of Regulations, and National Commission on Correctional Health Care ("NCCHC") correctional community standards for mental health care.

In providing Early Access and Stabilization services, Contractor shall adhere to the program outlines contained in Exhibit A-1, Program Elements.

Substantive Treatment shall be defined as treatment in addition to the level of the local jail baseline mental health treatment and that is restoration focused. This may include, but is not limited to, any of the following, as clinically indicated: the diagnosis, administration and management of medication with the goal of stabilization and restoration; clinical contacts and evaluations; multi-modal, experiential, and remedial competency training modules, either in a group or individual format, when clinically appropriate; and the development, monitoring, and modification of treatment plans.

- B. **Sheriff's Department Engagement:** Prior to evaluating IST defendants at a jail, the Contractor will be responsible for contacting the jail to:
1. Coordinate a meeting with Sheriff's Department representatives necessary for the Contractor to conduct and provide Services;
  2. Obtain any necessary Sheriff's Department contacts to establish and operate the Early Access and Stabilization program;
  3. Gather information on jail interview space and video conference capability;
  4. Determine need for interpretative services;
  5. Determine any needs for jail clearance;
  6. Obtain Sheriff's Department contacts for jail court liaison responsible for accepting 1372(a) certifications on behalf of the jail; and
  7. Subcontract with the Sheriffs' Departments to facilitate reimbursement of custody deputy services as outlined in Exhibit B.
- C. **Record Review:** Contractor shall ensure that an evaluation of each felony IST patient is conducted through, at a minimum, a review of the patient's current medical and mental health records.
- D. **General Mental Health Services:** Contractor shall conduct a general mental health assessment to ascertain the felony IST patient's mental health issues and provide individualized mental health support necessary to improve the felony IST patients' psychiatric stability.
- E. **Psychiatric Services:** Contractor shall provide psychiatric services, which shall include any of the following:
1. Psychiatric evaluation and medication management services with a licensed psychiatric prescriber or advanced nurse practitioner;
  2. Administration of medication for patients with involuntary medication orders (IMOs), when clinically indicated;
  3. Writing Administrative Law Judge (ALJ) certifications necessary to acquire an IMO for patients, as necessary, pursuant to Penal Code section 1370, subdivision (a)(2)(C).
  4. Psychiatry testimony in ALJ hearings, as needed;
  5. Psychological assessments as needed;
  6. Treatment planning;
  7. Data tracking relative to offered services and restoration rates.

Regarding stabilization of psychiatric symptoms, treatment interventions will:

1. Focus on aggressive medication management and monitoring of psychiatric symptoms;
2. Focus on multi-modal, experiential, and remedial training modules, either in a group or individual format;
3. Ensure close monitoring of offered services and patient's responsiveness to treatment. If patient is showing minimal responsiveness to treatment, in accordance with best practices, Contractor will appropriately modify and augment treatment with a focus on attempting to receive maximum treatment responsiveness for the felony IST patient.
4. Utilize the DSH Psychopharmacology Network (DSH PRN Consult) as directed by DSH and to obtain consultation for difficult psychiatric cases.

- F. **Competency Education:** Contractor shall provide individual competency education as clinically appropriate. Contractor will also provide group competency education as applicable and available. Contractor will be responsible for providing felony IST patients a competency education workbook and learning materials for self-study. Competency education will be commensurate with the felony IST patients' individual needs and barrier(s) to competency to stand trial. Competency education will be provided by a competency trainer or a clinician. The Contractor's competency trainer and/or clinician will reinforce mental health and competency restoration concepts with the goal of improving felony IST patients' factual and rational understanding of the criminal proceedings as well as the felony IST patients' ability to assist counsel in the conduct of a defense.

Felony IST patients may be offered competency restoration services in a group setting through virtual telehealth technology and/or through any groups available in a JBCT program occurring at the facility, depending on suitability for the groups and logistical availability.

- G. **Administrative Law Judge (ALJ) Support:** For felony IST patients who are refusing medication or are not medication adherent and do not have an IMO but require psychiatric medication, the Contractor's psychiatric prescriber or advanced nurse practitioner will notify DSH to obtain assistance and consultation in seeking to obtain an IMO through an ALJ hearing. The Contractor's psychiatric prescriber will then evaluate the patient and submit any necessary documentation to DSH for submission to the courts pursuant to Penal Code section 1370, subdivision (a)(2)(C) to obtain an IMO. Contractor's treating psychiatric prescriber will also testify in ALJ hearings, as necessary.
- H. **Coordination with DSH Patient Management Unit (PMU):** Contractor shall participate in regular (weekly, bi-weekly, or at intervals mutually agreed to by both DSH and contractor) clinical case conferences with PMU clinicians and care coordination staff. These conferences shall serve to share status updates regarding patients currently receiving Early Access and Stabilization services and can be used to refer patients to other services available through DSH programs including but not limited to IST Re-Evaluation or PRN consultation services. Contractor shall provide PMU clinicians and care coordination staff with access to patient medical and behavioral health records via Contractor's EMR.
- I. **Coordination with DSH Re-Evaluation Services:** If a patient is suspected to be restored to competency, Contractor will notify DSH-Patient Management Unit. Contractor will also coordinate with DSH-Patient Management Unit to ensure the patient can be evaluated for competency restoration by either DSH Re-Evaluation services or the Contractor's Licensed Psychologist. Contractor will also ensure Contractor's clinical staff are available for collateral contacts with DSH Re-Evaluation services, as needed.
- J. **Psychology Services:** Contractor may re-evaluate felony IST patients' competence to stand trial using the Contractor's licensed psychologist, after approval by DSH. If the Contractor's licensed

psychologist will be used to re-evaluate the felony IST patient's competence to stand trial, the Contractor's licensed psychologist will use an evidenced-based assessment of competence to stand trial, including one of the following:

- i. Fitness Interview Test – Revised (FIT-R);
- ii. Evaluation of Competency to Stand Trial – Revised (ECST-R);
- iii. MacArthur Competency Assessment Tool – Criminal Adjudication (MacCAT-CA); or
- iv. Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR).

If the Contractor's licensed psychologist is used to re-evaluate felony IST patients' competence to stand trial, the Contractor will be responsible for writing and filing with the court a certification and report if the patient is opined to be:

1. Restored to competency pursuant to Penal Code section 1372 (a);
2. Remaining incompetent to stand trial pursuant to Penal Code section 1370(b)(1);
3. Unlikely to be restored to competency pursuant to Penal Code section 1370(b)(1)(B); or
4. Reaching their maximum term of commitment pursuant to Penal Code section 1370(c)(1).

Contractor will also be required to provide DSH a copy of any certifications, reports, or correspondence filed with the court.

When malingering of psychiatric symptoms, cognitive impairment, or incompetency is suspected, Contractor will inform DSH-Patient Management Unit to use the DSH Re-Evaluation Service to evaluate the felony IST patient. Alternatively, if the Contractor's psychologist will conduct the assessment of malingering, the Contractor's psychologist will complete a malingering screening and/or assessment using well-validated, updated measures of malingering. The assessment will include historical information, record review, collateral information, and observational support.

K. **Patient Record:** Contractor shall be responsible for maintaining a patient record that documents and demonstrates the occurrence of Services for each felony IST patient enrolled in the program. Documentation shall include, but not be limited to, individual and group progress notes, documentation for collateral contacts, and evaluation reports.

L. **Staffing Reports:**

- i. Contractor shall provide monthly reports indicating vacant and filled positions.
- ii. Contractor shall submit staffing plans itemizing planned disciplines, position numbers, and recruitment and retention plans.
  - a. DSH reserves the right to adjust Contractor staffing, dependent on the number of county jails where Contractor has begun Early Access and Stabilization Services.

M. Should Contractor determine, based on clinical considerations, patient history, or other factors that a felony IST patient is, or likely shall be, violent and a significant danger to others participating in Services, Contractor shall inform the DSH Contract Manager, or designee, and the DSH-Patient Management Unit Care Coordinator, in writing. Contractor agrees that the decision to remove such a felony IST patient from Services is at the sole discretion of the DSH, and the DSH shall not unreasonably withhold such permission.

- N. Contractor shall be paid for providing these Services throughout the Agreement term based on the budgeted monthly allocation outlined in Exhibit B, Budget Detail and Payment Provisions.
- O. Information Technology (IT) Access
- i. Contractor shall maintain and manage their own Active Directory (AD) environment for users who will interface with the DSH application list.
  - ii. Contractor shall provide SAML 2.0/ADFS configuration to support single sign-on using the configuration provided by the DSH.
  - iii. Contractor shall complete authentication services through ADFS federation and users shall single sign on with Contractor's AD accounts.
  - iv. Contractor shall ensure telehealth clinical staff have high speed internet connectivity sufficient to accomplish the required administrative and treatment services, including DSH applications for patient tracking, uploading, and downloading.
  - v. Contractor shall comply with any and all testing procedures required by the DSH.
    - a. Contractor shall provide testing data to the DSH's Technology Services Division to identify issues with application performance.
    - b. Contractor shall be responsible for remediating issues identified relating to Contractor's infrastructure/security.
  - vi. Contractor shall be responsible for any configuration required to access the DSH's applications.
  - vii. Contractor shall provide end user training on use of DSH applications/systems. Upon request, the DSH shall provide an initial train-the-trainer (T4T) to Contractor's trainers. Contractor shall be responsible to pay for any expenses related to training for DSH applications/systems.
  - viii. Contractor shall, as needed by the DSH, change their internet browser type and/or version in order to allow DSH applications/systems to function correctly. The DSH and Contractor shall develop a Test Plan that includes DSH applications using Contractor's internet browser. Contractor shall provide the version of Java required to run DSH applications, as needed, in order for certain DSH applications to function correctly.
  - ix. Contractor shall whitelist (unblock) any DSH information and information systems that may be blocked by Contractor's internet filtering (web viewing content control software).
  - x. Contractor shall transmit Protected Health Information (PHI), that is accessed through DSH applications (e.g., Patient Reservation Tracking System, Enterprise Data Platform – EDP), internally via the appropriate DSH application or the DSH's SharePoint Business Intelligence Center (SP-BIC), or externally via the DSH's WatchDox application. Contractor shall ensure that any and all emails containing PHI or PII are encrypted in accordance with HIPAA standards.
  - xi. Contractor shall provide their own multifactor authentication solution and enforcement for access to all DSH applications.
  - xii. Contractor shall provide transcription services, if necessary.



- xiii. Contractor shall comply with Exhibit E, Confidentiality and Information Security Provisions, also known as Security and Privacy Addendum of this Agreement.
- xiv. Contractor shall sign a Business Associates Agreement (BAA) with the DSH and comply with the Health Insurance Portability and Accountability Act (HIPAA). Contractor shall implement National Institute of Standards and Technology (NIST) Special Publication 800-53 Rev. 4 controls for any systems within this Agreement and comply with the requirements within the State Administrative Manual Section 5300.
- xv. Contractor shall provide WebEx, Skype, and/or Telepresence for online/video meetings.
- xvi. Contractor shall be responsible for purchasing and supporting all applications (e.g., Dragon Speak), excluding the necessary DSH applications.
- xvii. Contractor shall ensure that only authorized and privileged users have access to DSH applications and that users do not share accounts.
  - a. No shared accounts shall be created to access DSH applications.
  - b. All AD accounts accessing DSH applications shall be assigned to a unique, active employee.
  - c. Contractor shall be responsible for training and onboarding all new employees as it relates to DSH applications.
  - d. Contractor shall only allow users to access DSH applications from Contractor's facility.
  - e. Contractor shall provide the DSH with a static IP address that users shall traverse to access DSH applications where treatment of patients shall occur.

P. Information Technology (IT) Help Desk Support

- i. Contractor shall contact DSH Client Services for any issues relating to the DSH applications by one of the following methods:
  - a. Submit by email to: ClientServices.TSD@dsh.ca.gov; or
  - b. Submit by phone at (916) 654-3445
- ii. Contractor shall create a service ticket within their organization prior to submitting a service request to the DSH.
- iii. Contractor shall provide the following items to the DSH upon submitting a service request:
  - a. Name
  - b. Phone Number
  - c. Contractor's Service Ticket Number
  - d. Summary of Issue
  - e. Screenshots of Issue

- Q. Contractor and its subcontractors shall procure and keep in full force and effect during the term of this Agreement all permits, registrations, and licenses necessary to accomplish the work specified in this Agreement and shall give all notices necessary and incident to the lawful prosecution of the work. Contractor shall provide proof of any such license(s), permits(s), and certificate(s) upon request by the DSH. Contractor agrees that failure by itself or its subcontractors to provide

evidence of licensing, permits, or certifications shall constitute a material breach for which the DSH may terminate this Agreement with cause.

- R. Contractor shall provide services as outlined in this Agreement. Contractor shall be responsible to fulfill the requirements of the Agreement and shall incur expenses at its own risk and invest sufficient amount of time and capital to fulfill the obligations as contained herein.
- S. Contractor and its subcontractors shall keep informed of, observe, comply with, and cause all of its agents and employees to observe and to comply with all prevailing Federal, State, and local laws, rules, and regulations made pursuant to said Federal, State, and local laws which in any way affect the conduct of the work of this Agreement. If any conflict arises between provisions of the plans and specifications and any such law above referred to, then Contractor shall immediately notify the State in writing.
- T. Unless otherwise specified, this Agreement may be canceled at any time by Contractor, in writing, with 50 days' advance notice. The DSH may terminate the Agreement pursuant to section 7 of Exhibit C if Contractor or its subcontractors fails to comply with a federal, state, or local law and the noncompliance, based on the facts and circumstances, would constitute a material breach of this Agreement under California law.

## **8. DSH RESPONSIBILITIES:**

### **A. Care Coordination**

- i. DSH-PMU will provide Contractor with a list of individuals committed to DSH who are eligible to receive Early Access Services on at least a weekly basis.
- ii. DSH-PMU will facilitate regular case management conferences to discuss the status of patients receiving services and shall have access to patient medical and behavioral health records on a real-time basis through the Contractor's electronic health record (EHR), or by electronic submission from the Contractor if EHR access is not available within a county.
- iii. DSH-PMU shall provide case management for all patients receiving Early Access Services, including coordinating between DSH programs (such as Re-Evaluation and PRN consultation services) and scheduling patients for transfer to a DSH facility when appropriate and a bed becomes available.

### **B. Information Technology (IT) Access**

- i. The DSH shall manage and maintain an application list which shall be used in the execution of services within this Agreement.
- ii. The DSH shall resolve any DSH application or system outages within a timely manner. The DSH shall notify Contractor of any scheduled or unscheduled outages and shall work with Contractor to resolve any issues as appropriate.
- iii. The DSH shall ensure connectivity to the application list.
- iv. The DSH shall only permit access to DSH applications using a static IP address provided by Contractor.

- v. The DSH shall provide standard connectivity documentation to access DSH applications.

**C. IT Maintenance and Change Process**

- i. The DSH shall follow a standard change control process. All maintenance and changes shall occur on Tuesdays between the hours of 6:00 p.m. and 1:00 a.m. Therefore, system availability shall be limited or unavailable during this time.
- ii. Under emergency situations, the DSH shall perform maintenance which may cause outages to systems without notification to end users.

**D. Rights of the DSH to Perform Quality Assurance and Financial Audits/Reviews**

- i. The DSH may routinely evaluate the work performance of Contractor, Contractor's personnel, subcontractors, or other parties associated with Contractor to determine if the DSH standards and departmental policies and procedures are being maintained. If it is found that any party fails to perform or is physically or mentally incapable of providing services as required by this Agreement, then that party shall not perform services for the DSH.
- ii. The DSH may monitor and evaluate services provided in fulfillment of the requirements of this Agreement, as detailed in Exhibit A. Such monitoring and evaluation may occur on a regular cycle or as deemed necessary by the DSH Contract Manager. The DSH retains sole and absolute discretion in determining any such evaluation schedule.
- iii. Inspections may be conducted by the DSH staff at various times during the Agreement term to review and observe the quality of work.
- iv. The DSH may audit and examine Contractor's records and accounts which pertain, directly or indirectly, to services performed under this Agreement. The DSH may hire third parties, at its own expense, to perform the audit and examination, including but not limited to, accountants, consultants, or service providers in the applicable field. Contractor shall cooperate fully with the audits and examinations.
- v. If, as a result of an audit and examination, the DSH is informed of underpayments or overpayments, the DSH shall notify Contractor of the need for payment or reimbursement. Upon receipt of a final audit report, Contractor has 30 days to reimburse any overpayment or to dispute or challenge the report. Contractor and the DSH shall confer and negotiate in good faith with respect to any disputed portion of the final audit report to reach agreement with respect to adjustments, payments, and reimbursements.
- vi. The DSH shall submit its findings to Contractor and establish a deadline for correcting any deficiencies in fulfilling the obligations set forth in this section. Failure by Contractor to timely correct deficiencies shall be reason for termination of services under this Agreement.

**9. PERFORMANCE MEASURES:**

**A. Complete and Timely Provision of Services**

- i. Expectations: Contractor is expected to provide all services, including any and all required reports, in a timely manner—in accordance with timelines established in this Scope of Work.

- ii. Failure to Provide Services: Should Contractor not provide all services, including any and all required reports in a timely manner, the DSH may choose to terminate this Agreement. If the DSH chooses to terminate pursuant to this Section, the DSH shall provide Contractor thirty (30) days advanced written notice specifying the basis for termination. The DSH shall pay for all services rendered up to the date of termination of the Agreement. Upon receipt of the written notice, Contractor shall have ten (10) days to provide a written response to the DSH. If Contractor provides a written response which cures, or provides a plan to cure, to the satisfaction of the DSH, the thirty (30) day notice shall become null and void and this Agreement shall remain in full force and effect. Additionally, the DSH may find Contractor to be not responsible in provision of services and evaluate this in future contracting opportunities.

#### **10. AMENDMENTS:**

- A. The parties reserve the right to amend this Agreement by extending its term for two (2) additional terms of up to one (1) year each, and to add funding sufficient for the period at the same rates. This right to amend is in addition to the right to amend for other reasons contained in this Agreement or noted in the solicitation that resulted in this agreement, if applicable. Any amendment shall be in writing and signed by both parties and be approved by the Department of General Services if such approval is required.

## **EXHIBIT A-1** **PROGRAM ELEMENTS**

### **1. PROGRAM ELEMENTS**

- A. Contractor shall conduct Services virtually and in-person.
- B. Contractor shall perform a record review of the referral and medical/mental health records received from the DSH Patient Management Unit (PMU). Additionally, Contractor shall review the felony IST patient's active jail mental health and medical treatment records where the felony IST patient is incarcerated to determine the patient's psychiatric adherence, stability, and whether psychotropic medication has/has not been prescribed, and initiate psychotropic medication, if clinically indicated.
- C. Contractor shall initiate Services with felony IST patients based on commitment date, starting the initiation of Services with felony IST patients with the oldest commitment date.
- D. Services shall begin no later than 72 hours after referral from DSH.
- E. Contractor shall ensure that all clinical staff are licensed to practice their discipline. Unlicensed staff may provide Services in Early Access and Stabilization program only after Contractor seeks and obtains approval from DSH for an unlicensed clinician waiver.
- F. If Contractor requires additional medical or mental health records, Contractor will submit the request to the PMU.
- G. By mutual agreement, Contractor will travel statewide to county jails to provide Services.
- H. For psychiatric services, Contractor may use a licensed psychiatric prescriber or an advanced nurse practitioner.
- I. Contractor shall grant designated DSH representatives' read only access to Contractor's electronic health record (EHR) for treatment planning and continuity of care purposes. In the event that there are barriers to EHR access in a county, Contractor agrees to electronically provide all patient records including, but not limited to, medical and mental health records within 48 hours of any request from DSH.
- J. Assessment Protocol
  - i. At least weekly, the Contractor shall assess and document felony IST patients' progress toward competency restoration based on observed psychiatric stability, medication adherence, improved understanding of basic competency restoration education, clinician/prescriber opinion, and the results of structured clinician assessment. Contractor's licensed psychologist, psychiatric prescriber, competency trainer, mental health clinician, licensed psychiatric technician, or licensed vocational nurse may be used for these duties. Other disciplines or clinicians may be used with the approval of DSH.
- K. Individualized Treatment Program Focused on Psychiatric Stabilization
  - i. Contractor shall review the IST pathway determined by the DSH PMU and use the pre-selected IST pathway to determine a treatment approach/plan.
  - ii. Upon admission, psychiatric prescriber, licensed vocational nurse, psychiatric technician, RN, mental health clinician, and/or waived unlicensed clinician shall identify specific deficits that are resulting in psychiatric instability and incompetence to stand trial and resolve said issue with an interest in improving the felony IST patient's psychiatric stability through psychotropic medication, clinical engagement, and basic competency education. Contractor's psychologist shall not be required for this task and shall only be used as an alternative to the above, section K(ii) referenced staff.

- iii. Upon admission, for each felony IST patient, Contractor will focus on psychiatric and medication stabilization.
  - a. Record review with a focus on the felony IST patient's psychiatric history and whether psychotropic medication necessary.
  - b. If psychotropic medication has not been initiated, prescribed, or the patient is refusing psychotropic medication, Contractor's psychiatric prescriber will assess the felony IST patient and determine the best treatment no later than eight calendar days after admission.
  - c. If psychotropic medication has been prescribed and the patient is refusing medication that is clinically appropriate and indicated, Contractor will notify DSH to initiate the administrative law judge (ALJ) process to obtain an IMO.
  - d. Contractor shall strive to use long-acting medications when possible and as appropriate.
  - e. Contractor shall offer services to all admitted felony IST patients at least three times per week with the goal of building rapport with patients to improve medication adherence, overall mental health stability, and general understanding of competency restoration education.
  - f. Contractor shall document all offered services as well as any reasons why services were not received by the patient.
  - g. Contractor's licensed vocational nurse/psychiatric technician will be available to provide support and assistance to Contractor's psychiatric prescribers (including tele-psychiatrists/Psychiatric Nurse Practitioners), such as conducting labs, vitals, charting, ensuring there are no barriers to the medication prescription, liaising between the Contractor's psychiatric prescriber and jail/jail medical/jail mental health staff as necessary.
- iv. Contractor shall provide an individualized treatment program based on the identified psychiatric needs, level of functioning, and competency deficits.
- v. Contractor shall tailor individualized treatment regimen to first focus on psychiatric stabilization followed by addressing the felony IST patient's specific barrier(s) to trial competency.
- vi. Contractor shall monitor and document in progress notes or evaluation reports felony IST patients' progress toward psychiatric stabilization and restoration of competence and appropriately augment and adjust the treatment as needed with an interest in maximizing psychiatric stabilization.

#### L. Competency Education Requirement

- i. Contractor shall provide basic competency education. Educational materials may be presented in multiple learning formats to each felony IST patient, e.g., a simple lecture format may be replaced with learning experiences involving discussion, reading, video, and experiential methods of instruction, such as role-playing.
- ii. Contractor shall address the following elements in the education modalities of the competency education meetings including, but not limited to:
  - 1) Criminal charges;
  - 2) Severity of charges,
  - 3) Sentencing;
  - 4) Pleas
  - 5) Plea bargaining;
  - 6) Roles of the courtroom personnel;

- 7) Adversarial nature of trial process;
- 8) Evaluating evidence;
- 9) Court room behavior;
- 10) Assisting counsel in conducting a defense;

M. Medication Administration and Consent

- i. Contractor shall obtain proper authorization (e.g., informed consent for treatment and/or medication issues) from the felony IST patients as soon as possible, in accordance with professional standards of care and court practices.
- ii. Contractor shall provide strategies to promote and incentivize voluntary psychotropic medication compliance.
- iii. If involuntary psychotropic medication is not ordered by the court at time of commitment of a felony IST patient to DSH, and the Contractor's treating psychiatric prescriber or advanced nurse practitioner determines that psychotropic medication has become medically necessary and appropriate, the Contractor's psychiatric prescriber or advanced nurse practitioner will notify DSH to obtain assistance and consultation in seeking to obtain an IMO through an ALJ hearing. The Contractor's psychiatric prescriber will then evaluate the patient and submit any necessary documentation to DSH for submission to the courts pursuant to Penal Code section 1370, subdivision (a)(2)(C) to obtain an IMO. Contractor's treating psychiatric prescriber will also testify in Administrative Law Judge (ALJ) hearings, as necessary. Contractor shall administer involuntary psychotropic medication when medically necessary and appropriate, upon the issuance of the court order.
- iv. Contractor shall use long-acting injectable medication when deemed necessary and appropriate.
- v. Contractor shall submit a monthly report to the DSH that identifies the Patient Inmates that were prescribed the non-formulary injectable psychotropic medication, Invega Sustenna®, during the reporting period and explains the medical necessity for each prescription.

N. Data Deliverables

- i. The DSH shall provide a standardized data collection template. Contractor shall complete and submit this data collection to the DSH on a weekly basis with a deadline to be determined by the DSH. The template shall include, but not be limited to, the following data elements:
  - 1) Full Name;
  - 2) Case Number;
  - 3) Booking Number;
  - 4) Gender;
  - 5) Date of Birth;
  - 6) Commitment Date;
  - 7) Maximum Commitment Date;
  - 8) Release Date (from jail); and
  - 9) Primary Diagnosis.

## 2. TREATMENT PROTOCOL

- A. Contractor shall perform a record review of the referral and medical/mental health records received from the PMU to ascertain the felony IST patient's needs for psychiatric stabilization and reason(s) the patient was deemed by the court to be incompetent to stand trial.
- B. Contractor shall develop a treatment plan no later than five business days following the psychiatric prescriber's evaluation of the IST felony patient.
- C. Treatment plans will be updated every thirty calendar days.
- D. Contractor shall offer, at a minimum, three times per week, Services with felony IST patients referred and admitted to the program. All offered Services shall be documented and any Services not received shall include the rationale.
- E. Contractor shall engage with felony IST patients to initiate psychiatric services, a prescription for psychotropic medication, a psychotropic medication regimen, and consistent medication management.
- F. If a felony IST patient has an IMO and is refusing medication that is clinically appropriate and clinically indicated, Contractor will coordinate with the Sheriff's Department to administer psychotropic medication involuntarily as ordered by the court.
- G. No later than five business days from the commencement of Services, if a felony IST patient requires psychiatric stabilization, is refusing psychiatric intervention, and does not have an IMO, Contractor shall notify DSH.
- H. Contractor shall consistently monitor felony IST patients' psychiatric stability and medication adherence and commence best practice psychiatric interventions as necessary to improve and maintain psychiatric stabilization.
- I. By mutual agreement, Contractor may perform competency education groups via a virtual platform, as appropriate, with sufficient numbers of eligible felony IST patients.
- J. If Contractor becomes aware that a felony IST patient may be restored to competency, the Contractor shall immediately notify the DSH Re-Evaluation Services team to initiate a competency interview and assessment.
- K. Contractor shall participate in collateral interviews with DSH staff as needed for competency assessments, questions regarding suitability or placement for various DSH programs, and discharge planning for community treatment options.
- L. Contractor shall document all patient clinical contact in progress notes.



**EXHIBIT B**  
**BUDGET DETAIL AND PAYMENT PROVISIONS**

**1. INVOICING AND PAYMENT**

- A. Invoices shall be submitted not more frequently than monthly in arrears.
- B. For services satisfactorily rendered, upon the first felony IST patient provided substantive treatment services in accordance with this agreement and upon receipt and approval of invoices submitted as described herein, the DSH agrees to compensate Contractor in accordance with the rates specified in section 5, Budget Detail. Notwithstanding the foregoing, Contractor shall invoice the DSH, following execution of this Agreement, for any and all initial program implementation costs incurred prior to the first felony IST patient receiving substantive treatment services, including Regional Labor, new employee training, program supplies, or other activities necessary to facilitate the commencement of Services.
- C. Contractor shall include in the invoices the costs for all psychiatric medications and Long Acting Injectable medications provided to patients in the Early Access and Psychiatric Stabilization, and all Long Acting Injectables (LAIs) provided to patients in the EASS program, the Jail Based Competency Treatment (JBCT), and/or AES programs. Contractor shall invoice the DSH, following execution of this agreement, for LAIs provided to patients in the Jail Based Competency Treatment (JBCT), and AES programs for expenses occurring beginning on April 1, 2022.
- D. Contractor shall submit invoices for any and all initial program implementation costs associated with and pertaining to the items in Exhibit A, Scope of Work, Section 5, "Program Implementation Funds" within 15 months from the contract start date- The total initial program implementation costs invoiced shall not exceed **\$6,157,148.00**.
- E. The DSH is not responsible for services performed by Contractor outside of this Agreement, or for services performed other than as outlined in Exhibit A, Scope of Work and Exhibit A-1, Program Elements.
- F. The DSH makes no guarantee, either written or implied, as to the actual amount of funds that will be expended under this Agreement.
- G. Contractor shall not bill or seek reimbursement from DSH for any good or services if Contractor receive or will receive reimbursement or funding for such goods or services under any federal program, such as the CARES Act or FEMA disaster relief, except when Contractor has billed Medicare and seeks the difference between the Medicare payment and the DSH contract price.

**2. INSTRUCTIONS TO CONTRACTOR:**

- A. To expedite the processing of invoices submitted to the DSH for payment, all invoice(s) shall be submitted to the DSH for review and approval at either:

Department of State Hospitals  
Attn: Accounting Office  
1215 O Street Sacramento, CA 95814

**OR**  
**DSHSAC.AccountsPayable@dsh.ca.gov**

- B. Contractor shall submit one original and three copies of each invoice, unless emailed.
- C. Contractor shall type, not handwrite, each invoice on company letterhead. The DSH may provide an invoice template, if requested, which may be used in lieu of company letterhead.
- D. Contractor shall clearly note Contractor's name and address on each invoice. The name on the invoice must match the Payee Data Record (Std. 204) and the name listed on this Agreement.
- E. Contractor shall list and itemize in accordance with the Budget Detail, all services or deliverables provided on each invoice.
- F. Contractor shall include the following on each submitted invoice:
  - i. Date(s) during which the services or deliverables were provided and the date in which the invoice was generated.
  - ii. Agreement number, which can be found on the Standard Agreement Form (Std. 213).
  - iii. Small Business certification number, if applicable.
  - iv. Professional license number, if applicable.
  - v. Invoice total.

### **3. 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 no longer be in full 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.
- C. If this Agreement overlaps Federal and State fiscal years, should funds not be appropriated by Congress or approved by the Legislature for the Fiscal Year(s) following that during which this Agreement was executed, the State may exercise its option to cancel this Agreement.
- D. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by Congress or the Legislature which may affect the provisions or terms of funding of this Agreement in any manner.

### **4. PROMPT PAYMENT CLAUSE:**

- A. Payment will be made in accordance with, and within the time specified in, Government Code section 927, et seq.

### **5. BUDGET DETAIL:**

- A. The maximum amount of this Agreement shall not exceed **\$132,357,441.00**.
- B. Program Implementation Costs:
  - i. Upon contract execution as well as receipt and approval of the submitted invoices, the DSH shall compensate Contractor for actual program implementation costs that shall not exceed **\$6,157,148.00**.

## C. Facility Program Labor Costs; Medical Supplies and Other Program Costs; and Regional Labor and Other Administrative Costs:

- i. Upon contract execution as well as receipt and approval of the submitted invoices, the DSH shall compensate Contractor for actual expenses no more frequently than on a monthly basis for Facility Program Labor Costs; Medical Supplies and Other Program Costs; and Regional Labor and Other Administrative Costs. Actual costs shall not exceed the following budgeted amounts displayed in the tables below unless otherwise noted below.

Cost Category	Annual Budget		
	FY 2021-22 (3 Months)	FY 2022-23 (12 Months)	FY 2023-24 (12 Months)
Facility Program Labor Costs	\$ 0.00	\$ 30,885,154.00	\$ 41,573,422.00
Medical Supplies and Other Program Costs	\$ 0.00	\$ 1,018,535.00	\$ 1,338,311.00
Regional Labor and Other Administrative Costs	\$ 1,075,617.00	\$ 4,302,468.00	\$ 4,496,077.00

Cost Category	Estimated Monthly Budget		
	FY 2021-22 (3 Months)	FY 2022-23 (12 Months)	FY 2023-24 (12 Months)
Facility Program Labor Costs	\$ 0.00	\$ 2,573,762.86	\$ 3,464,451.83
Medical Supplies and Other Program Costs	\$ 0.00	\$ 84,877.94	\$ 111,525.92
Regional Labor and Other Administrative Costs	\$ 358,539.00	\$ 358,539.00	\$ 374,673.08

## D. Management Fees and Deputy Costs:

- i. Upon contract execution as well as receipt and approval of the submitted invoices, the DSH shall compensate Contractor for expenses, as outlined based on the timeline below, no more frequently than on a monthly basis for Management Fees.
- a. Contractor's Management Fee shall be paid in monthly installments upon initiation of EASS Phase 1 (a through c) activation not to exceed \$235,000 monthly. Upon initiation of EASS Phase 2 and full implementation, an additional \$195,000 monthly shall be applied, not to exceed \$430,000 monthly. A three (3) percent cost increase shall be applied to FY 2023-24, not to exceed a monthly rate of \$442,900. EASS implementation phases are as follows:

Phase	Timeline	Number of Counties
1a	July 2022	9
1b	August 2022	9
1c	September 2022	9
2	October 2022 to March 2023	27
Full Implementation	By April 2023	54

Annual Budget			
Cost Category	FY 2021-22 (3 Months)	FY 2022-23 (12 Months)	FY 2023-24 (12 Months)
Management Fee	\$0.00	\$4,575,000.00	\$5,314,800.00

Estimated Monthly Budget			
Cost Category	FY 2021-22 (3 Months)	FY 2022-23 (12 Months)	FY 2023-24 (12 Months)
Management Fee	\$0.00	\$381,250.00	\$442,900.00

- ii. Upon contract execution as well as receipt and approval of the subcontracts with County Sheriffs' Offices demonstrating confirmed participation in the EASS program, the DSH shall compensate Contractor for expenses, as outlined based on the timeline below, no more frequently than on a monthly basis for Deputy Costs.
- Contractor shall compensate County Sheriffs' Offices via subcontract for custody deputy costs related, but not limited to, patient escorting to medication pass and administration of psychotropic medications, EASS clinical services, psychological assessments, and competency services. Contractor shall distribute funding to subcontracted County Sheriffs' Offices as follows, not to exceed \$400,000.00 annually per large county and \$200,000.00 annually per small county:
  - The Full-Time Equivalent (FTE) of 2.4 per large county and 1.4 per small county is an approximate equivalent and can be utilized by the County Sheriffs' Offices by the appointment of a dedicated deputy(ies) and accompanying relief factor assigned to support the EASS program or by the combination of fractional part-time deputies supporting the EASS program, at the County Sheriffs' Office discretion, so long as the EASS services are performed as outlined in the Contractor's subcontract with the County.
  - A four and a half (4.5) percent cost increase shall be applied to FY 2023-24.

Annual Budget			
Cost Category	FY 2021-22 (3 Months)	FY 2022-23 (12 Months)	FY 2023-24 (12 Months)
Deputy Costs	\$0	\$12,600,000.00	\$13,167,000.00

Estimated Monthly Budget			
Cost Category	FY 2021-22 (3 Months)	FY 2022-23 (12 Months)	FY 2023-24 (12 Months)
Deputy Costs	\$0	\$1,050,000.00	\$1,097,250.00

Large Counties	Funding	Approximate FTE
Alameda	\$ 400,000	2.4
Contra Costa	\$ 400,000	2.4
Fresno	\$ 400,000	2.4
Kern	\$ 400,000	2.4
Orange	\$ 400,000	2.4
Sacramento	\$ 400,000	2.4
Santa Clara	\$ 400,000	2.4
Solano	\$ 400,000	2.4
Stanislaus	\$ 400,000	2.4
Tulare	\$ 400,000	2.4

All Other Counties	Funding	Approximate FTE
Alpine	\$ 200,000	1.4
Amador	\$ 200,000	1.4
Butte	\$ 200,000	1.4
Calaveras	\$ 200,000	1.4
Colusa	\$ 200,000	1.4
Del Norte	\$ 200,000	1.4
El Dorado	\$ 200,000	1.4
Glenn	\$ 200,000	1.4
Humboldt	\$ 200,000	1.4
Imperial	\$ 200,000	1.4
Inyo	\$ 200,000	1.4
Kings	\$ 200,000	1.4
Lake	\$ 200,000	1.4
Lassen	\$ 200,000	1.4
Madera	\$ 200,000	1.4
Marin	\$ 200,000	1.4
Mariposa	\$ 200,000	1.4
Mendocino	\$ 200,000	1.4
Merced	\$ 200,000	1.4
Modoc	\$ 200,000	1.4
Mono	\$ 200,000	1.4
Monterey	\$ 200,000	1.4
Napa	\$ 200,000	1.4
Nevada	\$ 200,000	1.4
Placer	\$ 200,000	1.4
Plumas	\$ 200,000	1.4
San Benito	\$ 200,000	1.4
San Francisco	\$ 200,000	1.4
San Luis Obispo	\$ 200,000	1.4
San Mateo	\$ 200,000	1.4
Santa Barbara	\$ 200,000	1.4
Santa Cruz	\$ 200,000	1.4
Shasta	\$ 200,000	1.4
Sierra	\$ 200,000	1.4
Siskiyou	\$ 200,000	1.4
Sonoma	\$ 200,000	1.4
Sutter	\$ 200,000	1.4
Tehama	\$ 200,000	1.4
Trinity	\$ 200,000	1.4
Tuolumne	\$ 200,000	1.4
Ventura	\$ 200,000	1.4
Yolo	\$ 200,000	1.4
Yuba	\$ 200,000	1.4

**Total                      \$    12,600,000**

- iii. The estimated monthly budget amounts are based on dividing the annual budget amounts in accordance with the number of months in each fiscal year of the contract term. This information is to be used for planning purposes to manage available funding levels. Total actual costs shall not exceed the budgeted annual allocation amounts by fiscal year.
- iv. Upon invoicing, Contractor shall clearly identify the actual expenditures for the service categories outlined in the table below. Contractor shall itemize expenses and provide a sufficient level of detail to support the invoice claim. Contractor shall be required to seek pre-

approval from the DSH Contract Manager on the level of detail required to for submission by the Contractor to support the invoice claim.

E. Pharmaceuticals:

- i. Upon invoicing, Contractor shall clearly identify the number of felony IST patients receiving early access and stabilization services in the monthly billing cycle.
- ii. The DSH shall compensate Contractor for prescribed psychotropic medication costs based on actual usage when medically necessary, which shall not exceed the contract total. Upon invoicing, Contractor shall clearly identify the cost per long-acting injection multiplied by the number of Patient Inmates that received the injection during the month that services were provided. The DSH and Contractor shall monitor drug usage and, if/when Contractor anticipates exceeding the Pharmaceuticals Budget, Contractor shall notify the DSH Contract Manager and the DSH will execute a contract amendment to this Agreement in order to increase the Pharmaceuticals Budget, contingent upon the availability of sufficient funds.

Prescribed Non-Formulary Injectable Psychotropic Medication (Pharmaceuticals)				
Cost Per Injection		Total Patient Inmates		Total for [insert month being invoiced]
[Insert actual cost for one injection of this medication]	<b>x</b>	[Insert number of Patient Inmates who received this injection in the month being invoiced]	<b>=</b>	\$ _____

Cost Category	Annual Allocation		
	FY 2021-22 (3 Months)	FY 2022-23 (12 Months)	FY 2023-24 (12 Months)
Pharmaceuticals	\$ 114,581.00	\$ 2,533,582.00	\$ 3,205,746.00

Cost Category	Monthly Allocation		
	FY 2021-22 (3 Months)	FY 2022-23 (12 Months)	FY 2023-24 (12 Months)
Pharmaceuticals	\$ 38,193.83	\$ 211,131.86	\$ 267,145.50

- iii. The monthly allocation amounts are based on dividing the annual allocation amounts and shall not exceed the budgeted annual allocation amounts by fiscal year.

## F. Budget Summary:

Program Implementation Costs	\$6,157,148.00
Facility Program Labor Costs	\$72,458,576.00
Pharmaceuticals	\$5,853,909.00
Medical Supplies and Other Program Costs	\$2,356,846.00
Regional Labor and Other Administrative Costs	\$9,874,162.00
Management Fee	\$9,889,800.00
Deputy Costs	\$25,767,000.00
<b>Grand Total (not to exceed):</b>	<b>\$132,357,441.00</b>

- G. At the sole discretion of the DSH and for the purposes of accounting, the DSH may adjust the total proposed expenditure for each fiscal year as needed. In no event will this change the contract price for the services rendered.
- H. Contractor must submit all invoices within a reasonable time but, no later than twelve months from the date that services were provided. If Contractor fails to provide invoices within twelve months of the date services are rendered, the DSH may elect to reject the invoices for payment as untimely and Contractor will be deemed to have waived any right to payment of the late invoices.
- I. Contractor shall not be reimbursed for any travel-related expenses. All travel shall be at the expense of the Contractor.

**EXHIBIT B-1**  
**SAMPLE INVOICE**

[Insert Contractor's Department company logo/address]

**INVOICE**

DATE	INVOICE #

Department of State Hospitals  
Attn: Accounting Office  
1215 O Street  
Sacramento, CA 95814

PERIOD OF SERVICE	AGREEMENT #
[insert date range of month invoiced]	

Service Description	Monthly Total Cost
Program Implementation Costs	\$ _____
Facility Program Labor Costs	\$ _____
Pharmaceuticals	\$ _____
Medical Supplies and Other Program Costs	\$ _____
Regional Labor and Other Administrative Costs	\$ _____
Management Fee	\$ _____

<b>Invoice Total</b>	<b>\$ _____</b>
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PLEASE MAKE REMITTANCE PAYABLE TO:

[Insert Contractor's Department billing contact/address]

Prepared By: [Signature here] \_\_\_\_\_  
[Insert name/title here]



**EXHIBIT C**  
**GENERAL TERMS AND CONDITIONS**

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

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not 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 a 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 been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

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

- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

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

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

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

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

report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

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

**EXHIBIT D**  
**SPECIAL TERMS AND CONDITIONS**

**1. SUBCONTRACTS:**

- A. Except for subcontracts identified in accordance with the solicitation, Contractor shall submit any subcontracts in connection with this Agreement to DSH for its prior written approval. No work shall be subcontracted without the prior written approval of DSH. Upon the termination of any subcontract, DSH shall be notified immediately. Any subcontract shall include all the terms and conditions of this Agreement and its attachments.
- B. Nothing contained in this Agreement shall create any contractual relationship between DSH and any subcontractors, and Contractor is solely responsible for payment of any and all fees, expenses, salaries and benefits of subcontractor. No subcontract shall relieve Contractor of its responsibilities and obligations hereunder. Contractor is fully responsible to DSH for the acts and omissions of its subcontractors and of persons either directly or indirectly employed or acting as an agent by any of them. Contractor agrees to indemnify and hold DSH harmless for any costs, losses or claims, including reasonable attorney fees, resulting from its subcontractors.

**2. PUBLICATIONS AND REPORTS:**

- A. DSH reserves the right to use and reproduce all publications, reports, and data produced or delivered pursuant to this Agreement. DSH further reserves the right to authorize others to use or reproduce such materials, provided the author of the report is acknowledged in any such use or reproduction.
- B. If the publication and/or report are prepared by non-employees of DSH, and the total cost for such preparation exceeds \$5,000, the publication and/or report shall contain the numbers and dollar amounts of all agreements and subcontracts relating to the preparation of the publication and report in a separate section of the report (Government Code section 7550).

**3. PROGRESS REPORTS:**

- A. If progress reports are required by the Agreement, Contractor shall provide a progress report in writing, or orally if approved by DSH Contract Manager, at least once a month to DSH Contract Manager. This progress report shall include, but not be limited to; a statement that Contractor is or is not on schedule, any pertinent reports, and any interim findings if applicable. Contractor shall cooperate with and shall be available to meet with DSH to discuss any difficulties, or special problems, so that solutions or remedies can be developed as soon as possible.

**4. PRESENTATION:**

- A. Upon request, Contractor shall meet with DSH to present any findings, conclusions, and recommendations required by the Agreement for approval. If set forth in the Agreement, Contractor shall submit a comprehensive final report for approval. Both the final meeting and the final report shall be completed on or before the date indicated in this Agreement.

**5. DEPARTMENT OF STATE HOSPITALS STAFF:**

- A. DSH's staff shall be permitted to work side-by-side with Contractor's staff to the extent and under conditions as directed by DSH Contract Manager. In this connection, DSH's staff shall be given access to all data, working papers, etc., which Contractor seeks to utilize.
- B. The Contractor shall abide by DSH's written policy and procedures on "nepotism," which is defined as "The practice of an employee using their influence or power to aid or hinder another in the employment setting because of a personal relationship." Accordingly, Contractor shall not use their influence or power to aid or hinder another in DSH's or Contractor's employment setting because of a personal relationship. The Contractor shall disclose any personal relationship with any current DSH workforce member by completing DSH 3215 Verification of Personal Relationships and Hiring of Relatives. Contractor shall also disclose any personal relationships with any current subcontractor(s)' workforce member.

**6. CONFIDENTIALITY OF DATA AND DOCUMENTS:**

- A. Contractor shall not disclose data or documents or disseminate the contents of the final or any preliminary report without written permission of DSH Contract Manager. However, all public entities shall comply with California Public Records Act (Government Code sections 6250 et seq.).
- B. Permission to disclose information or documents on one occasion shall not authorize Contractor to further disclose such information or documents on any other occasion except as otherwise provided in the Agreement or required by law.
- C. Contractor shall not comment publicly to the press, or any other media, regarding the data or documents generated, collected, or produced in connection with this Agreement, or DSH's actions on the same, except to DSH's staff, Contractor's own personnel involved in the performance of this Agreement, or as required by law.
- D. If requested by DSH, Contractor shall require each of its employees or officers who will be involved in the performance of this Agreement to agree to the above terms in a form to be approved by DSH and shall supply DSH with evidence thereof.
- E. Each subcontract shall contain the foregoing provisions related to the confidentiality of data and nondisclosure.
- F. After any data or documents submitted has become a part of the public records of DSH, Contractor may at its own expense and upon written approval by DSH Contract Manager, publish or utilize the same data or documents but shall include the following Notice:

**LEGAL NOTICE**

*This report was prepared as an account of work sponsored by the Department of State Hospitals (Department) but does not necessarily represent the views of the Department or any of its employees except to the extent, if any, that it has formally been approved by the Department. For information regarding any such action, communicate directly with the Department at P.O. Box 952050, Sacramento, California, 94252-2050. Neither said Department nor the State of California, nor any officer or employee thereof, or any of its contractors or subcontractors makes any warranty, express or*

*implied, or assumes any legal liability whatsoever for the contents of this document. Nor does any party represent that use of the data contained herein, would not infringe upon privately owned rights without obtaining permission or authorization from any party who has any rights in connection with the data.*

## **7. PROVISIONS RELATING TO DATA:**

- A. "Data" as used in this Agreement means recorded information, regardless of form or characteristics, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or be used to define a design or process; or support a premise or conclusion asserted in any deliverable document called for by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, charts, tables, mathematical modes, collections or extrapolations of data or information, etc. It may be in machine form, as punched cards, magnetic tape, computer printouts, or may be retained in computer memory.
- B. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by Contractor in the performance of this Agreement at the expense of DSH, together with complete documentation thereof, shall be treated in the same manner as generated data.
- C. "Deliverable data" is that data which under terms of this Agreement is required to be delivered to DSH. Such data shall be property of the State of California and DSH.
- D. Prior to the expiration of any legally required retention period and before destroying any data, Contractor shall notify DSH of any such contemplated action; and DSH may within 30 days of said notification determine whether or not this data shall be further preserved. DSH shall pay the expense of further preserving this data. DSH shall have unrestricted reasonable access to the data that is preserved in accordance with this Agreement.
- E. Contractor shall use best efforts to furnish competent witnesses to testify in any court of law regarding data used in or generated under the performance of this Agreement.
- F. All financial, statistical, personal, technical and other data and information relating to DSH's operation, which are designated confidential by the State or DSH and made available to carry out the Agreement, or which become available to Contractor in order to carry out this Agreement, shall be protected by Contractor from unauthorized use and disclosure.
- G. If DSH determines that the data and information are inadequately protected by Contractor or its subcontractors, DSH shall provide notice of its determination and Contractor and/or its subcontractors shall improve the protections to DSH's satisfaction which shall be evidenced by written approval of the protections implemented.

## **8. APPROVAL OF PRODUCT:**

- A. Each product to be approved under this Agreement shall be approved by the Contract Manager. DSH's determination as to satisfactory work shall be final, absent fraud or mistake.

**9. SUBSTITUTIONS:**

- A. Contractor's key personnel as indicated in its proposal may not be substituted without the Contract Manager's prior written approval.

**10. NOTICE:**

- A. Notice to either party shall be given by first class mail, by Federal Express, United Parcel Service or similar carrier, properly addressed, postage fully prepaid, to the address beneath the name of each respective party. Alternatively, notice may be given by personal delivery by any means whatsoever to the party and such notice shall be deemed effective when delivered.

**11. WAIVER:**

- A. All remedies afforded in this Agreement are cumulative; that is, in addition to every other remedy provided therein or by law. The failure of DSH to enforce any provision of this Agreement, shall not waive its right to enforce the provision or any other provision of the Agreement.

**12. GRATUITIES AND CONTINGENCY FEES:**

- A. Contractor shall not provide gratuities to any officer or employee of DSH or the State to secure an agreement or favorable treatment with respect to an agreement, the occurrence of which shall constitute a material breach of this Agreement. DSH, by written notice to Contractor, may terminate this Agreement with cause if it is found that gratuities were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of the State or DSH with a view toward securing an agreement or securing favorable treatment with respect to the awarding, amending, or performance of such agreement.
- B. In the event this Agreement is terminated as provided in the paragraph above, DSH shall be entitled (a) to pursue the same remedies against Contractor as it could pursue in the event of the breach of the Agreement by Contractor, and (b) as a predetermined amount of liquidated damages, Contractor shall pay an amount which shall not be less than three times the cost incurred by Contractor in providing any such gratuities to any such officer or employee.
- C. The rights and remedies of DSH provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
- D. Contractor warrants by execution of this Agreement that no person or selling agency has been employed or retained to solicit or secure this Agreement for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Contractor, for the purpose of securing business. For breach or violation of this warranty, DSH shall, among other rights, have the right to rescind this Agreement without liability, paying only for the values of the work actually returned, or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**13. INTEGRATION CLAUSE:**

- A. The parties agree that this Agreement, including only the State standard form 213 and all exhibits, constitute the entire agreement of the parties and no other understanding or communication, whether written or oral, shall be construed to be a part of this Agreement.



**14. CAPTIONS:**

- A. The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to and shall not be deemed to define, limit or extend the scope or intent of the clauses to which they pertain.

**15. PUBLIC HEARINGS:**

- A. If public hearings on the subject matter dealt with in this Agreement are held within one year from the Agreement expiration date, Contractor shall make available to testify the personnel assigned to this Agreement at the hourly rates specified in Contractor's proposed budget. DSH shall reimburse Contractor for travel of said personnel at the Agreement, or if none, at State rates for such testimony as may be requested by DSH.

**16. FORCE MAJEURE:**

- A. Neither DSH nor Contractor shall be deemed to be in default in the performance of the terms of this Agreement if either party is prevented from performing the terms of this Agreement by causes beyond its control, which shall include without being limited to: acts of God; interference, rulings or decision by municipal, Federal, State or other governmental agencies, boards or commissions; any laws and/or regulations of such municipal, State, Federal, or other governmental bodies; or any catastrophe resulting from flood, fire, explosion, earthquakes or other similar environmental causes beyond the control of the defaulting party. If any of the stated contingencies occur, the party delayed by force majeure shall immediately give the other party written notice of the cause of delay. The party delayed by force majeure shall use reasonable diligence to correct the cause of the delay, if correctable.

**17. LITIGATION:**

- A. DSH, promptly after receiving notice thereof, shall notify Contractor in writing of the commencement of any claim, suit, or action against DSH or its officers or employees for which Contractor must provide indemnification under this Agreement. The failure of DSH to give such notice, information, authorization or assistance shall not relieve Contractor of its indemnification obligations. Contractor shall immediately notify DSH of any claim or action against it which affects, or may affect, this Agreement, the terms or conditions hereunder, DSH, and shall take such action with respect to said claim or action which is consistent with the terms of this Agreement and the interest of DSH.
- B. Contractor shall be in default of this Agreement (i) upon the institution by or against Contractor of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Contractor's debts, (ii) upon Contractor making an assignment for the benefit of creditors, (iii) upon either party's dissolution or ceasing to do business or (iv) when the facts and circumstances indicate that Contractor is insolvent. For purposes of this Agreement, Contractor shall be deemed insolvent if: (i) Contractor has failed to pay salaries, overtime or benefits required by law of agreement, (ii) Contractor has failed to pay a subcontractor amounts owed pursuant to its agreements with a subcontractor, or (iii) Contractor has failed to pay a vendor amounts Contractor owes the vendor for more than 90 days the past due date for payment.

**18. DISPUTES:**

- A. Contractor shall first discuss and attempt to resolve any dispute arising under or relating to the performance of this Agreement.

**19. EVALUATION OF CONTRACTOR'S PERFORMANCE:**

- A. DSH shall evaluate Contractor's performance under this Agreement using standardized evaluation forms which shall be made available to every state agency pursuant to Public Contracts Code section 10367.

**20. AUDITS, INSPECTION AND ENFORCEMENT:**

- A. Contractor agrees to allow DSH to inspect its facilities and systems and make available for review its books and records to enable DSH to monitor compliance with the terms of this Agreement and audit invoices submitted to DSH.
- B. Contractor shall promptly remedy any violation of any provision of this Agreement to the satisfaction of DSH.
- C. The fact that DSH inspects, or fails to inspect, or has the right to inspect Contractor's facilities, systems, books and records does not relieve Contractor of its responsibility to independently monitor its compliance with this Agreement.
- D. DSH's failure to detect or DSH's detection of any unsatisfactory practices, but failure to notify Contractor or require Contractor's remediation of the unsatisfactory practices does not constitute acceptance of such practice or a waiver of DSH's enforcement rights under the Agreement.

**21. USE OF STATE FUNDS:**

- A. Contractor, including its officers and members, shall not use funds received from DSH pursuant to this Agreement to support or pay for costs or expenses related to the following:
  - i. Campaigning or other partisan activities to advocate for either the election or defeat of any candidate for elective office, or for or against the passage of any proposition or ballot measure; or,
  - ii. Lobbying for either the passage or defeat of any legislation.
- B. This provision is not intended and shall not be construed to limit any expression of a view, opinion, or position of any member of Contractor as an individual or private citizens, as long as state funds are not used; nor does this provision limit Contractor from merely reporting the results of a poll or survey of its membership.

**22. CANCELLATION PROVISIONS:**

- A. Unless otherwise specified, this Agreement may be canceled at any time by DSH, in writing, with thirty (30) days advance notice. If canceled, payment shall be made only for the provision of services expressly authorized by this Agreement until the date of cancellation and only at the

rates set forth in Exhibit B, Budget Detail. In the case of early termination, a final payment will be made to Contractor upon receipt of an invoice covering all authorized costs, at the rates set forth in Exhibit B, incurred prior to the date of cancellation or termination. DSH shall not be responsible for unamortized costs, overhead or capital costs or any other related costs, including but, not limited to costs incurred in connection with the cancellation of leases or contracts pertaining to facilities, equipment or supplies, labor and employee benefits costs, and expenditures incurred after the date of notice of cancellation.

- B. If DSH determines that Contractor has breached a material term of the Agreement and has not cured the breach or ended the violation within the time specified by DSH, DSH may terminate the contract by providing notice to Contractor. DSH Information Security Officer shall report as required HIPAA violations to the Secretary of the U.S. Department of Health and Human Services.
- C. Failure to comply with section 1 or 6 of this Exhibit, or a violation of section 12 of this Exhibit, shall be deemed a material breach of this Agreement.

### **23. EMPLOYMENT PROVISIONS:**

- A. Contractor acknowledges and agrees that neither Contractor, their personnel, subcontractors, nor other service providers through this Agreement are employees of DSH. Contractor and its independent contractors shall be solely responsible for:
  - i. Paying any and all payroll taxes, including, but not limited to Social Security and Medicare taxes,
  - ii. Federal or state income tax withholding,
  - iii. Providing unemployment insurance and workers compensation insurance, and
  - iv. Paying compensation to its employees in accordance with federal and state labor laws, including overtime pay unless otherwise specified in this Agreement, as well as penalties that may be imposed for failure to comply with these laws. Contractor agrees to indemnify and hold harmless DSH for any damages, losses, expenses, including reasonable attorney fees, in connection with its failure to pay salary or overtime, or provide benefits, including, but not limited to health care benefits or retirement benefits, to its employees, or its failure to provide to comply with federal or state labor laws.

### **24. LIABILITY FOR LOSS AND DAMAGES:**

- A. Any damages by Contractor, their personnel, subcontractors, and other service providers through this Agreement to DSH's facility, including equipment, furniture, materials, or other State or DSH property, shall be repaired or replaced by Contractor to the satisfaction of DSH at Contractor's expense. DSH, at its option, may repair any such damage and deduct the cost thereof from any sum due Contractor under this Agreement.

### **25. SECURITY CLEARANCE/FINGERPRINTING/TUBERCULIN SKIN TESTING:**

- A. DSH reserves the right to conduct fingerprinting, drug testing, and/or security clearance through the Department of Justice, Bureau of Criminal Identification and Information (BCII), prior to award

and at any time during the term of the Agreement, in order to permit Contractor, their personnel, subcontractors, and other service providers through this Agreement access to State premises. DSH further reserves the right to terminate this Agreement should a threat to security be determined.

- B. In the event that the services required under this Agreement will be performed within a DSH facility, Contractors and their employees who are assigned to work with, near, or around patients shall be required to be examined and tested or medically evaluated by a licensed healthcare provider for TB in an infectious or contagious stage prior to the performance of contracted duties, and at least once a year thereafter (within 12 months of their initial or previous TB test under this contract), or more often as directed by DSH. Contractors and their employees who have any contact (physical or nonphysical) with patients, shall be required to furnish to the DSH Contract Manager, at no cost to DSH, a documented Tuberculosis (TB) evaluation/test for TB infection (Tuberculin Skin Test (TST) or a blood test Interferon Gamma Release Assay (IGRA) completed within (30) thirty days of the start date of the services and be certified to be free of TB in an infectious or contagious stage by a licensed healthcare provider prior to assuming their contracted duties and annually thereafter.
- C. If both of the documented results of the TST provided  $\leq 0-9$ /mm of induration, then the tested person may be cleared to provide services. However, if the documented result of the TST is  $\geq 10$ /mm of induration, then they shall be subject to additional testing and/or clearances before he or she is allowed to work at a DSH facility.
- D. DSH reserves the right, in its sole and absolute discretion, to take measures to minimize the transmission of influenza. Contractor, their personnel, subcontractors, and other service providers through this Agreement may be required to either a) show written proof that they have received an influenza vaccine, or b) complete an Influenza Declination Form, which will be provided upon request. In addition, all non-vaccinated providers may be required to wear a mask. In its sole and absolute discretion, DSH may elect to provide free influenza vaccines to Contractor, their personnel, subcontractors, and other service providers through this Agreement.

## **26. PHYSICIAN OWNERSHIP AND REFERRAL ACT OF 1993:**

- A. For applicable medical services contracts, and in accordance with the Physician Ownership and Referral Act of 1993, Contractor shall not refer any patient to any health care provider or health-related facility if Contractor has a financial interest with that health care provider or health-related facility.
- B. Contractor may make a referral to or request consultation from a sole source health care provider or health-related facility in which financial interest is held if Contractor is located where there is no alternative provider of service within either twenty-five (25) miles or forty (40) minutes travel time, subject to the prior approval of DSH. Contractor shall disclose, in writing, as well as on a continuous basis, to DSH, its financial interest at the time of referral or request for consultation. In no event, will this prohibit patients from receiving emergency health care services.

## **27. AMENDMENTS:**

- A. The parties reserve the right to amend this Agreement as mutually agreed upon. This is in addition to the right to amend for other reasons contained in this Agreement or noted in the

solicitation that resulted in this Agreement, if applicable. Any amendment shall be in writing and signed by both parties and be approved by the Department of General Services if such approval is required.

*Revision 11-17-2020*

**EXHIBIT E**  
**CONFIDENTIALITY AND INFORMATION SECURITY PROVISIONS**  
**(HIPAA Business Associate Agreement)**

These Confidentiality and Information Security Provisions (for HIPAA/HITECH Act contracts) set forth the information privacy and security requirements Contractor is obligated to follow with respect to all confidential information (as defined herein) disclosed to Contractor, or collected, created, maintained, stored, transmitted, or used by Contractor for or on behalf of the California Department of State Hospitals (DSH), pursuant to Contractor's agreement with DSH. DSH and Contractor (the parties) desire to protect the privacy and provide for the security of DSH confidential information pursuant to this Exhibit and in compliance with state and federal laws applicable to the confidential information.

**1. CONFIDENTIALITY AND INFORMATION SECURITY PROVISIONS:**

- A. Contractor shall comply with applicable laws and regulations, including but not limited to Welfare and Institutions Code sections 14100.2 and 5328 et seq. (2021), the Lanterman-Petris-Short Act, Civil Code section 1798 et seq. (2021), the Information Practices Act of 1977, Health and Safety Code section 123100 et seq. (2021), the Patient Access to Health Records Act, Title 42, Code of Federal Regulations (C.F.R.) part 431.300 et seq. (2021), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including but not limited to section 1320d et seq. of Title 42 of the United States Code and its implementing regulations (including but not limited to Title 45, Code of Federal Regulations (C.F.R.), parts 160, 162 and 164 (2021) (HIPAA regulations) regarding the confidentiality and security of protected health information (PHI). The following provisions of this Exhibit set forth some of the requirements of these statutes and regulations. This Exhibit should not be considered an exclusive list of the requirements. Contractor is required to fulfill the requirements of these statutes and regulations by independently researching and obtaining legal advice on these requirements as they may be amended from time to time.
- B. Order of Precedence: With respect to confidentiality and information security provisions for all DSH confidential information, the terms and conditions of this Exhibit shall take precedence over any conflicting terms or conditions set forth in any other part of the agreement between Contractor and DSH, including Exhibit A (Scope of Work), all other exhibits and any other attachments, and shall prevail over any such conflicting terms or conditions.
- C. Effect on lower tier transactions: The terms of this Exhibit shall apply to all contracts, subcontracts, and subawards, and the information privacy and security requirements Contractor is obligated to follow with respect to DSH confidential information disclosed to Contractor, or collected, created, maintained, stored, transmitted or used by Contractor for or on behalf of DSH, pursuant to Contractor's agreement with DSH. When applicable, the Contractor shall incorporate the relevant provisions of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.

**2. DEFINITIONS:**

- A. The following terms used in the agreement between DSH and Contractor shall have the same meaning as those terms in the HIPAA Rules: Breach, Covered Entity, Data Aggregation,

Disclosure, Health Care Operations, Individual, Minimum Necessary, Protected Health Information, Secretary, Subcontractor, Unsecured Protected Health Information, and Use.

**B. Specific Definitions**

- i. Contractor. Contractor shall have the same meaning as the term “business associate” at 45 C.F.R. section 160.103 (2021).
- ii. Breach. With respect to Contractor’s handling of confidential information, “breach” shall have the same meaning as the term “breach” in HIPAA, 45 C.F.R. section 164.402 (2021).
- iii. HIPAA Rules. HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. parts 160 and 164 (2021).
- iv. Confidential Information. Confidential information shall mean information or data that is Protected Health Information or Personal Information as defined herein.
- v. Personal Information (PI). Personal Information shall have the same meaning as defined in Civil Code section 1798.3, subdivision (a) (2021).
- vi. Required by law, as set forth under 45 C.F.R. section 164.103 (2021), shall mean a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- vii. Security Incident. Security Incident shall mean the intentional attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, or confidential data that is essential to the ongoing operation of Contractor’s organization and intended for internal use; or interference with system operations in an information system.

**3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE:**

**A. Contractor agrees to:**

- i. not use or disclose confidential information other than as permitted or required by the agreement between DSH and Contractor or as required by law. Any use or disclosure of DSH confidential information shall be the Minimum Necessary;
- ii. use appropriate safeguards, and comply with Subpart C of 45 C.F.R. part 164 (2021) with respect to electronic confidential information, to prevent use or disclosure of confidential information other than as provided for by the agreement with DSH;
- iii. report to DSH any use or disclosure of confidential information not provided for by the agreement with DSH of which it becomes aware, including breaches of unsecured

protected health information as required at 45 C.F.R. section 164.410 (2021), and any security incident of which it becomes aware;

- iv. in accordance with 45 C.F.R. sections 164.502(e)(1)(ii) and 164.308(b)(2) (2021), if applicable, ensure that any agents and subcontractors that create, receive, maintain, or transmit confidential information on behalf of Contractor enter into a written agreement with Contractor agreeing to be bound to the same restrictions, conditions, and requirements that apply to Contractor with respect to such information;
- v. to provide access and make available confidential information in a designated record set to DSH or to an Individual in accordance with 45 C.F.R. section 164.524 (2021) and California Health and Safety Code section 123100 et seq. (2021). Designated Record Set shall mean the group of records maintained for DSH that includes medical, dental, and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DSH health plans; or those records used to make decisions about individuals on behalf of DSH. Contractor shall use the forms and processes developed by DSH for this purpose and shall respond to requests for access to records transmitted by DSH within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none;
- vi. if Contractor maintains an Electronic Health Record with PHI and an Individual requests a copy of such information in an electronic format, Contractor shall provide such information in an electronic format to enable DSH to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e) (2021);
- vii. if Contractor receives data from DSH that was provided to DSH by the Social Security Administration, upon request by DSH, Contractor shall provide DSH with a list of all employees, subcontractors, and agents who have access to the Social Security data, including employees, contractors, and agents of its subcontractors and agents;
- viii. make any amendment(s) to confidential information in a Designated Record Set as directed or agreed to by DSH pursuant to 45 C.F.R. section 164.526 (2021), or take other measures as necessary to satisfy DSH's obligations under 45 C.F.R. section 164.526 (2021);
- ix. to document and make available to DSH or (at the direction of DSH) to an Individual within 15 days such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the Individual for an accounting of disclosures of PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 C.F.R. section 164.528 (2021) and 42 U.S.C. section 17935(c) (2021). If Contractor maintains electronic health records for DSH as of January 1, 2009, Contractor must provide an accounting of disclosures, including those disclosures for treatment, payment, or health care operations, effective with disclosures on or after January 1, 2014. If Contractor acquires electronic health records for DSH after January 1, 2009, Contractor must provide an accounting of disclosures, including those disclosures for treatment, payment, or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting;



- x. to the extent Contractor is to carry out one or more of DSH's obligation(s) under Subpart E of 45 C.F.R. part 164 (2021), comply with the requirements of Subpart E that apply to DSH in the performance of such obligation(s); and
- xi. make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA regulations.
- xii. comply with all legal obligations pursuant to the California Consumer Privacy Protection Act (CCPA) of Contractor, its employees, agents and sub-contractors, including but not limited to the handling and disclosure of personal information received resulting from this agreement, abiding by CCPA notice requirements on Contractor's website(s), safeguarding personal information received in connection with this agreement, refraining from using personal information received in connection with this agreement outside of the enumerated business purpose contained therein. Contractor's failure to comply with such laws and regulations shall constitute a material breach of this Agreement, and shall be grounds for immediate termination of the Agreement by DSH, pursuant to section 7 of Exhibit C. By executing this Agreement, Contractor certifies that it is aware of its legal obligations as set forth under the CCPA, that it is in compliance with the CCPA, and shall remain in compliance with all such laws and regulations for the term of this Agreement.
- xiii. indemnify and hold the DSH harmless from and against any and all liability, loss, suit, damage or claim, including third party claims brought against the DSH, pursuant to section 5 of Exhibit C of this Agreement, as well as damages and reasonable costs assessed against the DSH by a court of competent jurisdiction (or, at Contractor's option, that are included in a settlement of such claim or action in accordance herewith), to the fullest extent permitted by State law, to the extent such claim arises from Contractor's violation of the CCPA in relation to Contractor's performance under this agreement; provided, that (i) Contractor is notified promptly in writing of the claim; (ii) Contractor controls the defense and settlement of the claim; (iii) Contractor provides a defense with counsel approved by the DSH; and (iv) the DSH cooperates with all reasonable requests of Contractor (at Contractor's expense) in defending or settling the claim.

#### **4. PERMITTED USES AND DISCLOSURES OF CONFIDENTIAL INFORMATION BY THE CONTRACTOR:**

- A. Except as otherwise provided in the agreement between Contractor and DSH, Contractor, may use or disclose DSH confidential information to perform functions, activities or services identified in the agreement with DSH provided that such use or disclosure would not violate federal or state laws or regulations.
- B. Contractor may not use or disclose the confidential information except as provided and permitted or required by this agreement with DSH or as required by law.
- C. Contractor may use and disclose confidential information for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided that such uses and disclosures are required by law.

- D. Contractor may use confidential information to provide data aggregation services related to the health care operations of the DSH. Data aggregation means the combining of DSH confidential information created or received by Contractor on behalf of DSH with confidential information received by Contractor in its capacity as the business associate of another Covered Entity, to permit data analyses that relate to the health care operations of DSH.

## **5. SAFEGUARDS:**

- A. Contractor shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical, and physical safeguards. The information privacy and security program shall reasonably and appropriately protect the confidentiality, integrity, and availability of the confidential information that it creates, receives, maintains, or transmits; and prevent the use or disclosure of confidential information other than as provided for by the agreement with DSH. Contractor shall provide the DSH with information concerning such safeguards as the DSH may reasonably request from time to time.
- B. Contractor shall implement administrative, technical, and physical safeguards to ensure the security of the DSH information on portable electronic media (e.g., USB drives and CD-ROM) and in paper files. Administrative safeguards to be implemented shall include, but are not limited to training, instructions to employees, and policies and procedures regarding the HIPAA Privacy Rule. Technical safeguards to be implemented must comply with the HIPAA Security Rule and Subpart C of part 164 of the HIPAA regulations with respect to electronic confidential information, and shall include, but are not limited to, role-based access, computer passwords, timing out of screens, storing laptop computers in a secure location (never leaving the equipment unattended at workplace, home or in a vehicle) and encryption. Physical safeguards to be implemented shall include, but are not limited to, locks on file cabinets, door locks, partitions, shredders, and confidential destruct.

## **6. AUTHENTICATION:**

- A. Contractor shall implement appropriate authentication methods to ensure information system access to confidential information is only granted to properly authenticated and authorized persons. If passwords are used in user authentication (e.g., username/password combination), Contractor shall implement strong password controls on all compatible computing systems that are consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-53 and the SANS Institute Password Protection Policy.
- i. Contractor shall implement the following security controls on each server, workstation, or portable (e.g., laptop computer) computing device that processes or stores confidential, personal, or sensitive data:
- (1) network-based firewall and/or personal firewall,
  - (2) continuously updated anti-virus software and
  - (3) patch-management process including installation of all operating system/software vendor security patches.

- ii. Encrypt all confidential, personal, or sensitive data stored on portable electronic media (including, but not limited to, CDs and thumb drives) and on portable computing devices (including, but not limited to, laptop computers, smart phones and PDAs) with a solution that uses proven industry standard algorithms.
- iii. Prior to disposal, sanitize all DSH confidential data contained in hard drives, memory devices, portable electronic storage devices, mobile computing devices, and networking equipment in a manner consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-88.
- iv. Contractor shall not transmit confidential, personal, or sensitive data via e-mail or other Internet transport protocol over a public network unless, at minimum, a 128-bit encryption method (for example AES, 3DES, or RC4) is used to secure the data.

## **7. MITIGATION OF HARMFUL EFFECTS:**

- A. Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of confidential information by Contractor or its subcontractors in violation of the requirements of the agreement.

## **8. NOTIFICATION OF BREACH:**

- A. During the term of the agreement with DSH, Contractor shall report to DSH any use or disclosure of information not provided for by its contract of which it became aware including breaches of unsecured confidential information as required by 45 C.F.R. section 164.410 (2021).

## **9. DISCOVERY OF BREACH:**

- A. Contractor shall immediately notify the DSH Chief Information Security Officer by telephone call and email upon the discovery of a breach of confidential information in all forms (paper, electronic, or oral) if the confidential information was, or is reasonably believed to have been, acquired by an unauthorized person, or within 24 hours by email or fax of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of confidential information in violation of the agreement with DSH, or potential loss of DSH confidential data. If the security incident occurs after business hours or on a weekend or holiday, notification shall be provided by calling the DSH Chief Information Security Officer. Contractor shall take:
  - i. prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
  - ii. any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

## **10. INVESTIGATION OF BREACH:**

- A. Contractor shall immediately investigate such security incident, breach, or unauthorized use or disclosure of DSH confidential information. Within 8 hours of discovery (of the breach), Contractor shall notify the DSH Chief Information Security Officer of at least the following:

- i. the data elements involved and the extent of the confidential data involved in the breach;
- ii. a description of the unauthorized person(s) known or reasonably believed to have improperly acquired, accessed, used, transmitted, sent or disclosed confidential information;
- iii. a description of where and when the confidential information is believed to have been improperly acquired, accessed, used, transmitted, sent or disclosed;
- iv. a description of the probable causes of the improper acquisition, access, use, transmission, sending, or disclosure; and
- v. whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are required.

**11. WRITTEN REPORT:**

- A. Contractor shall provide a written report of the investigation to the DSH Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, an estimation of cost for remediation, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.

**12. NOTIFICATION OF INDIVIDUALS:**

- A. Contractor shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and to pay any costs of such notifications, as well as any costs associated with the breach. Notification shall be made in the most expedient time possible without reasonable delay. The DSH Program Contract Manager, DSH Chief Information Security Officer, and DSH Chief Privacy Officer shall approve the time, manner, and content of any such notifications and their review and approval must be obtained by Contractor before the notifications are made.

**13. DSH CONTACT INFORMATION:**

- A. Contractor shall direct communications to the DSH Program Contract Manager, DSH Chief Information Security Officer, and DSH Chief Privacy Officer Contractor shall initiate contact as indicated herein. DSH reserves the right to make changes to the contact information below by giving written notice to Contractor. Said changes shall not require an amendment to the agreement between the parties to which it is incorporated.

<b>DSH Contract Manager</b>	<b>DSH Chief Privacy Officer</b>	<b>DSH Chief Information Security Officer</b>
See Exhibit A - Scope of Work for contact information	Chief Privacy Officer Office of Legal Services 1215 O Street, MS-5 Sacramento, CA 95814  Email: <a href="mailto:yamin.scardigli@dsh.ca.gov">yamin.scardigli@dsh.ca.gov</a> Telephone: 916-562-3721	Chief Information Security Officer Information Security Office 1215 O Street, MS-4 Sacramento, CA 95814  Email: <a href="mailto:iso@dsh.ca.gov">iso@dsh.ca.gov</a> and <a href="mailto:security@dsh.ca.gov">security@dsh.ca.gov</a>

	Telephone: 916-654-4218
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**14. INTERNAL PRACTICES:**

- A. Contractor shall make Contractor's internal practices, books and records relating to the use and disclosure of DSH confidential information received from DSH, or created, maintained or received by Contractor, available to DSH or to the Secretary in a time and manner designated by DSH or by the Secretary, for purposes of determining DSH's compliance with HIPAA regulations.

**15. EMPLOYEE TRAINING AND DISCIPLINE:**

- A. Contractor shall train and use reasonable measures to ensure compliance with the requirements of the agreement between DSH and Contractor by employees who assist in the performance of functions or activities under this agreement and use or disclose confidential information; and discipline such employees who intentionally violate any provisions of this agreement.

**16. EFFECT OF TERMINATION:**

- A. Upon termination or expiration of the agreement between Contractor and DSH for any reason, Contractor shall return, at its sole expense, to DSH all confidential information within five (5) business days or as otherwise specified in the request or notice to return records or, if agreed to by DSH, destroy all confidential information received from DSH or created or received by Contractor on behalf of DSH, that Contractor still maintains in any form. Contractor shall retain no copies of DSH confidential information. However, if return or destruction is not feasible, Contractor shall continue to extend the protections and provisions of the agreement to such information, and limit further use or disclosure of such confidential information to those purposes that make the return or destruction of such confidential information infeasible. This provision shall apply to DSH confidential information that is in the possession of Contractor, its subcontractor(s), or its agent(s).

**17. MISCELLANEOUS PROVISIONS:**

- A. DSH shall notify Contractor and Contractor shall notify DSH of restrictions on disclosures or the manner of confidential communications requested and agreed to by Contractor or DSH from an Individual to satisfy 45 C.F.R. section 164.522 (2021).
- B. Assistance in Litigation or Administrative Proceedings. Contractor shall make itself, and use its best efforts to make any subcontractors, employees or agents assisting Contractor in the performance of its obligations under the agreement with DSH, available to DSH at no cost to DSH to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DSH, its directors, officers or employees for claimed violations of HIPAA, regulations or other laws relating to security and privacy based upon actions or inactions of Contractor and/or its subcontractors, employees, or agents, except where Contractor or its subcontractors, employees, or agents is a named adverse party.
- C. No Third-Party Beneficiaries. Nothing expressed or implied in the terms and conditions of the agreement between Contractor and DSH is intended to confer, nor shall anything herein confer, upon any person other than DSH or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

- D. The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with the HIPAA regulations and applicable federal and state laws. The parties agree that any ambiguity in the terms and conditions of the agreement between the parties shall be resolved in favor of a meaning that complies and is consistent with state and federal law, including HIPAA and the HIPAA regulations.
- E. A reference in the terms and conditions of the agreement between DSH and Contractor to any HIPAA regulation relates to that section in effect or as amended.
- F. The obligations of Contractor under this Exhibit E shall survive the termination or expiration of the agreement.

#### **18. JUDICIAL OR ADMINISTRATIVE PROCEEDINGS:**

- A. DSH may immediately terminate the agreement between Contractor and DSH if (a) Contractor is found liable in a civil or criminal proceeding for a violation of the HIPAA Privacy or Security Rule or (b) a finding or stipulation that Contractor has violated a privacy or security standard or requirement of HIPAA, or other security or privacy laws made in an administrative or civil proceeding in which Contractor is a party.

#### **19. TERMINATION FOR CAUSE:**

- A. In accordance with 45 C.F.R. section 164.504(e)(1)(ii) (2021), upon DSH's knowledge of a material breach or violation of this Exhibit by Contractor, DSH shall:
  - i. Provide an opportunity for Contractor to cure the breach or end the violation and terminate the agreement if Contractor does not cure the breach or end the violation within the time specified by DSH; or
  - ii. Immediately terminate the agreement pursuant to section 7 of Exhibit C of this Agreement, if Contractor has breached a material term of this Exhibit and cure is not possible.

**EXHIBIT G**  
**INSURANCE REQUIREMENTS**

**1. APPLICABLE LIABILITY INSURANCE:**

- A. The insurance and/or bonds identified below with a marked box are a required part of this Agreement, and only the marked boxes have any force or effect under this Agreement. Except as set forth below, evidence of liability insurance coverage, in the form of a certificate acceptable to the State of California and DSH, shall be provided prior to the execution of this Agreement and the commencement of services.
- B. DSH reserves the right, at its sole discretion, to cancel a proposed award to Contractor which does not submit all required insurance documents in a timely manner. Should DSH cancel a proposed award for this reason, DSH reserves the right, at its sole discretion, to award the contract to the next lowest, responsive and responsible provider.

☒ **Commercial General Liability:**

Contractor shall maintain general liability insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage liability combined. 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 claim is made or suit is brought.

Should Contractor use a subcontractor to complete a portion of this Agreement, Contractor shall include the subcontractor as an additional named insured under Contractor's policy, or represents and warrants that each subcontractor is insured under their own Commercial General Liability policy at the amounts specified herein. Contractor shall supply evidence of the subcontractor's insurance to DSH upon request.

**Requirement to Insure the State:** Contractor is required to name the "State of California, its officers, employees, and agents" as additional insured parties, insofar as operations under the Agreement are concerned. To satisfy this requirement, Contractor shall ensure that the following requirement(s) are met:

- **Policy Endorsement:** Contractor, when providing a signed contract to DSH and unless otherwise directed by DSH, shall provide proof that Contractor has insured the State of California, its officers, employees, and agents. This proof shall come in the form of an endorsement to Contractor's insurance policy (Form CG 20 10 11 85 or as broad as), or in the form of a copy of Contractor's current insurance policy that shows that the policy insures all parties required to be insured by this Agreement.

☐ **Pollution/Environmental Impairment Liability:**

Contractor shall maintain Pollution Liability covering Contractor's liability for bodily injury, property damage and environmental damage resulting from pollution or hazardous materials and related cleanup costs incurred, arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on-site, as well as during the transportation or disposal of hazardous materials. Contractor shall maintain limits of not less than \$1,000,000 per claim and \$2,000,000 aggregate.

**Requirement to Insure the State:** Contractor is required to name the "State of California, its officers, employees, and agents" as additional insured parties, insofar as operations under the Agreement are concerned. To satisfy this requirement, Contractor shall ensure that the following requirement(s) are met:

- **Policy Endorsement:** Contractor, when providing a signed contract to DSH and unless otherwise specified, shall provide proof that Contractor has insured the State of California, its officers, employees, and agents. This proof shall come in the form of an endorsement to Contractor's insurance policy, or in the form of a copy of Contractor's current insurance policy that shows that the policy insures all parties required to be insured by this Agreement.

☒ **Motor Vehicle Liability:**

Contractor shall maintain motor vehicle liability insurance with limits of not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of an accident involving a motor vehicle in use by Contractor during the provision of services under this Agreement, including, but not limited to, Contractor owned, hired, and non-owned motor vehicles.

**Requirement to Insure the State:** Contractor is required to name the "State of California, its officers, employees, and agents" as additional insured parties, insofar as operations under the Agreement are concerned. To satisfy this requirement, Contractor shall ensure that the following requirement(s) are met:

- **Policy Endorsement:** Contractor, when providing a signed contract to DSH and unless otherwise specified, shall provide proof that Contractor has insured the State of California, its officers, employees, and agents. This proof shall come in the form of an endorsement to Contractor's insurance policy, or in the form of a copy of Contractor's current insurance policy that shows that the policy insures all parties required to be insured by this Agreement.

☒ **Professional Liability:**

Contractor shall maintain Professional Liability insurance covering any damages caused by an error, omission or any negligent acts. Contractor shall maintain limits of not less than \$1,000,000 per claim and \$2,000,000 aggregate.

In the event a medical professional performing services under this Agreement is a subcontractor or is performing services through a registry, the medical professional actually performing the services shall be the insured and shall comply with the Professional Liability/Medical Malpractice insurance requirements of this Agreement. The prime contractor shall be responsible to enforce this provision and employ only those medical professionals meeting this requirement. Evidence of compliant insurance shall be provided to DSH prior to the commencement of services.

☐ **Performance Bond:**

Contractor shall obtain and maintain a performance bond of not less than the contract price of this Agreement, which shall be executed by a California-admitted surety insurer. Bonds not so-executed shall be rejected. Contractor shall submit two (2) executed copies on standard bonding company forms.



☐ **Payment Bond:**

Contractor shall provide DSH with a payment bond of not less than the contract price of this Agreement. The bond shall cover the costs of labor and materials provided by Contractor's employees, subcontractors, and suppliers in the event that Contractor fails to pay the costs of labor and materials to those individuals or entities. In order to meet this requirement, Contractor shall submit two (2) executed copies of the Payment Bond Form (STD 807). A copy of the STD 807 can be found at: <https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std807.pdf>

☒ **Workers' Compensation:**

If Contractor is required by statute, regulation, or Court order, to provide Workers' Compensation and Employer's Liability Insurance for performance of services under this Agreement, Contractor shall carry and shall maintain sufficient and adequate insurance for all of its employees who shall be engaged in the performance of this Agreement. Contractor shall maintain Employer's Liability limits of not less than \$1,000,000 per claim. Failure to maintain the insurance pursuant to this clause shall be deemed a material breach of the Agreement and DSH may terminate this Agreement for cause.

If required by DSH, in writing, Contractor shall furnish, within three (3) state business days following DSH's request, either 1) a copy of the certificate of insurance, a "true and certified" copy of the policy, or any other proof of coverage issued by Contractor's insurance carrier reflecting workers' compensation coverage; or 2) written confirmation, in a manner defined by DSH, that workers' compensation coverage is not required.

Contractor also agrees to indemnify, defend and hold harmless the state of California, DSH, its officers, agents and employees from any and all claims by Contractor's employees, agents and/or anyone representing Contractor, related to any non-performance of this section.

**2. TERM OF INSURANCE:**

- A. Insurance shall be in effect for the entire term of this Agreement. If the insurance expires prior to the end of the term of the Agreement, a new certificate must be received by DSH at least ten (10) days prior to the expiration of the insurance.

**3. TERMINATION FOR NON-COMPLIANCE:**

- A. In the event Contractor fails to keep in effect at all times the specified insurance coverage, this failure shall be deemed a material breach of the Agreement and DSH may, in addition to any other remedies it may have, terminate this Agreement with cause upon the occurrence of such event.

**4. CERTIFICATE HOLDER AND SUBMISSION:**

- A. Certificates of liability insurance must name DSH as a certificate holder and shall be submitted to the following address:

Department of State Hospitals - Sacramento  
Attention: Contracts Office  
1215 O Street  
Sacramento CA 95814

Or

email: DSHContracts@dsh.ca.gov

**5. SELF-INSURANCE REQUIREMENTS:**

- A. If Contractor is a California governmental entity, Contractor is not required to provide proof of insurance.
- B. For all other Contractors, for Workers' Compensation insurance, Contractor must be listed on the Department of Industrial Relations website as having a Certificate of Consent to Self-Insure.
- C. For all other Contractors, for all other insurance categories, Contractor must provide:
  - i. A cover letter from Contractor's risk manager (or similar position) providing a description of the self-insurance plan for the types of coverage required in this Agreement. The description must detail what is covered by the plan and identify the source of funds for financing the plan.
  - ii. An audited financial report from the most recent quarter, along with any applicable accounting letters relative to the report.
  - iii. Evidence of firm having current equity of at least \$5,000,000 and current net profit of at least \$500,000.
  - iv. A signed written statement from Contractor's Certified Public Accountant (CPA) indicating the firm's annual net profit for the prior four (4) years has been a minimum of \$500,000.
- D. Contractor agrees to submit to DSH evidence of, upon request by DSH, and DSH reserves the right to verify, or cause to be verified, the source of funds for financing the self-insurance plan. DSH also reserves the right to require subsequent assistance from Contractor's risk manager to provide explanations of aspects of the self-insurance plan which need clarification. Upon request by DSH, Contractor shall provide additional reasonable assurances and documentation to DSH of its ability to meet the requirements to self-insure.
- E. Contractors which are self-insured for a specific type of insurance do not need to add the State as an additional insured.

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