

Department of State Hospitals

County of Monterey Sheriff's Office  
 Agreement Number: 21-79001-000  
 Exhibit A, Scope of Work

## EXHIBIT A SCOPE OF WORK

**1. CONTRACTED PARTIES:**

A. The County of Monterey Sheriff's Office, and/or their authorized designee, hereafter referred to in the combined 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 the Monterey County Jail (MCJ), 1410 Natividad Road, Salinas, CA 93906.

**3. SERVICE HOURS:**

A. The services shall be provided 24 hours per day, seven days per week, including all State holidays.

**4. PROJECT REPRESENTATIVES:**

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

<b>DSH Contract Manager:</b>	
Section/Unit: Forensic Services Division	
Attention: Melanie Scott, Psy.D. Assistant Chief Psychologist	
Address: 1600 9 <sup>th</sup> Street, Room 410 Sacramento, CA 95814	
Phone: (916) 616-5703	Fax: (916) 651-1168
Email: Melanie.Scott@dsh.ca.gov	

<b>DSH Administrative Contact:</b>	
Section/Unit: Forensic Services Division	
Attention: Selene Mujica Program Manager	
Address: 1600 9 <sup>th</sup> Street, Room 410 Sacramento, CA 95814	
Phone: (916) 651-7913	Fax: (916) 651-1168
Email: Selener.Mujica@dsh.ca.gov	

<b>Monterey County Contract Manager:</b>	
Section/Unit: Sheriff's Office/Fiscal Unit	
Attention: Arthur Curtright Management Analyst II	
Address: 1414 Natividad Road Salinas, CA 93906	
Phone: (831) 755-3708	Fax: (831) 755-3746
Email: CurtrightAC@co.monterey.ca.us	

<b>Monterey County Sheriff's Office Contact:</b>	
Section/Unit: Corrections Bureau/Custody Operations	
Attention: James Bass Chief Deputy	
Address: 1410 Natividad Road Salinas, CA 93906	
Phone: (831) 755-3887	Fax: (831) 755-3746
Email: BassJH@co.monterey.ca.us	

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<b>Monterey County Jail – Medical Contact:</b>	
Section/Unit: Wellpath	
Attention: Christina Kaupp, R.N.	
Address: 1410 Natividad Road Salinas, CA 93906	
Phone: (831) 755-3885	Fax: (831) 759-7234
Email: ckaupp@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. Initial setup of patient rooms as well as treatment and office space;
  - ii. Initial administrative operating expenses and equipment;
  - iii. Development of an operational clinical Policy and Procedure Manual; and
  - iv. Orientation and training time for new staff on clinical operations, policies, and procedures.

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

- A. Contractor shall provide access to portions of its MCJ for the purposes of administering a Jail-Based Competency Treatment (JBCT) program for the provision of restoration of competency treatment services for male individuals, hereafter referred to as "Patient Inmates," found by the courts to be Incompetent to Stand Trial (IST) under Penal Code section 1370. Contractor shall provide restoration of competency treatment services to male felony IST Patient Inmates participating in the JBCT program pursuant to the DSH JBCT Policy and Procedures Manual.

**7. CONTRACTOR RESPONSIBILITIES:**

- A. Contractor shall designate an area within the MCJ dedicated to the administration of a JBCT program and provide restoration of competency treatment services that, either directly or through contract, may restore trial competency for male incarcerated felony IST Patient Inmates committed to the DSH under Penal Code section 1370. Contractor shall submit any proposed changes to the JBCT program's designated area to the DSH for its prior written approval.
- B. In providing restoration of competency treatment services, Contractor shall adhere to the program outlines contained in Exhibit A-1, Program Elements and the DSH JBCT Policy and Procedures Manual, hereafter referred to as the "Manual." Contractor acknowledges it has received a copy of the Manual and has had an opportunity to review the terms and conditions of the Manual and consult with independent counsel. Contractor agrees to the terms and conditions of the Manual and that the terms and conditions of the Manual are incorporated into this Agreement by reference. The meanings of the terms and requirements in this Agreement, unless otherwise defined in this Agreement, are defined in the Manual. In the event of an inconsistency between the Manual, attachments, specifications, or provisions which constitute this Agreement, the following order of precedence shall apply:

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- i. DSH JBCT Policy and Procedures Manual (the "Manual");
- ii. Standard Agreement, STD. 213;
- iii. This Exhibit A, Scope of Work, including specifications incorporated by reference; and
- iv. All attachments incorporated in this Agreement by reference.

The Manual, as referenced in this Agreement, may be amended by the DSH from time to time. Contractor shall operate the JBCT program in accordance with the Manual, including any future amendments to the Manual. From the effective date of any amendment, Contractor shall follow the amendments required by any change in California statute or regulation. For all other amendments, Contractor shall present any of Contractor's concerns to the DSH within 10 business days from the date of notification, which does not relieve Contractor from adhering to any amendment, unless agreed upon in writing by the DSH. The DSH and Contractor shall negotiate, in good faith, changes to the Manual.

- C. Contractor shall ensure that a preliminary evaluation of each potential male JBCT Patient Inmate is conducted through, at a minimum, a review of the medical and mental health records of each prospective male Patient Inmate, prior to admission into the JBCT program.
  - i. Contractor shall ensure that priority for admissions to the JBCT program shall be based on commitment date, regardless of the county of commitment, unless an exception is made based on one of the factors listed in California Code of Regulations (CCR), Title 9, Section 4710. In the event multiple male felony IST defendants have the same commitment date, admission shall be scheduled based on the availability of the committing county to transport the defendants.
  - ii. Upon admission into the JBCT Program, Contractor shall ensure that a more thorough assessment is conducted as indicated in Exhibit A-1, Program Elements, and the DSH JBCT Policy and Procedures Manual.
- D. Contractor shall provide a total of 10 single cells with beds to male Patient Inmates located in the JBCT designated area. Of the 10 beds, Contractor shall reserve four beds for male Patient Inmates whose committing county is Monterey. Contractor shall ensure the remaining six beds are available to male Patient Inmates referred by any committing county.

Contractor shall be paid in full for the 10 contracted beds (**Allocated Beds**) at the per diem rate upon the first Patient Inmate admission, regardless of the number of male Patient Inmates admitted.

Effective July 1, 2022, Contractor shall provide 11 single cells with beds to Patient Inmates in the JBCT program's designated area. Of the 11 beds, Contractor shall reserve four beds for male Patient Inmates whose committing county is Monterey. Contractor shall ensure the remaining seven beds are available to male Patient Inmates referred by any committing county.

Contractor shall be paid in full for the minimum ten beds (**Allocated Beds**) at the per diem rate upon the first Patient Inmate admission, regardless of the number of Patient Inmates admitted.

Contractor shall be paid for additional beds (**Non-Allocated Beds**) at the per diem rate for the actual number of days that each individual Patient Inmate is in the JBCT program.

Beginning 90 days from the first Patient Inmate admission, if, over the course of each quarter period during the term of this Agreement, a 90 percent occupancy rate is not maintained, the DSH and Contractor shall execute an amendment to this Agreement upon jointly developing a plan to reduce

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the minimum number of beds provided and the budget amount accordingly. This provision shall correspond to the standard quarter periods commencing annually on July 1.

- E. Male Patient Inmates housed at the MCJ shall remain under the legal and physical custody of Contractor.
- F. Contractor retains the right to exclude specific individual male Patient Inmates from the JBCT designated area for security and classification reasons at the time of assignment or at any point during their incarceration at the MCJ.
- G. Should Contractor determine, based on clinical considerations, patient history, or other factors, that a current or potential male Patient Inmate is, or likely shall be, violent and a significant danger to others participating in the JBCT program, Contractor shall inform the DSH Contract Manager immediately in writing, and by phone. Contractor agrees that the decision to remove such a Patient Inmate from the JBCT program is at the sole discretion of the DSH, and the DSH shall not unreasonably withhold such permission. In the event a male Patient Inmate is removed from the JBCT program, the DSH shall arrange to have such Patient Inmate admitted to a state hospital forthwith as is permitted under the admission requirements set forth in CCR, Title 9, sections 4700, et seq. Contractor shall continue to treat the male Patient Inmate in the JBCT program until such arrangements are made. Contractor shall notify the committing county of the male Patient Inmate's removal from the JBCT program upon the Patient Inmate's admission to the state hospital.
- H. Notwithstanding Sections F and G, Contractor shall make every reasonable effort to ensure that the 10 contracted beds, 11 contracted beds effective July 1, 2022, provided for treatment services under this Agreement are occupied by male Patient Inmates at all times. This includes, but is not limited to, admitting male Patient Inmates of increasing levels of acuity.
  - i. The DSH shall make every reasonable effort to ensure adequate male Patient Inmate referrals are sent to Contractor throughout the term of this Agreement.
  - ii. By mutual agreement, in writing, and at the request of the DSH, Contractor may admit male Patient Inmates into the JBCT program above the 10 contracted beds, 11 contracted beds effective July 1, 2022.
- I. Contractor shall provide for the care, confinement, and security of the male Patient Inmates in accordance with all federal and state laws, standards, regulations, policies, procedures, and court orders applicable to the MCJ, including the Prison Rape Elimination Act.
- J. Contractor's custody staff assigned to the JBCT program shall receive Enhanced Mentally Ill Offender or Crisis Intervention Training (CIT) provided by Contractor and shall participate in the JBCT program treatment team meetings.
- K. Responsibilities for Medical Care:
  - i. Contractor shall provide all Patient Inmates, regardless of committing county, with the full range of Routine Medical Care available to other inmates of the MCJ and is financially responsible for such care. Contractor agrees that the cost of all Routine Medical Care is included in the per diem rate charged to the DSH.
  - ii. For the purposes of this Agreement, Routine Medical Care shall be defined as all medical, dental, and mental health care as well as the cost of medical supplies, formulary prescription medications which are provided to Patient Inmates, and restoration of competency treatment

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- services which are provided by the MCJ to Patient Inmates, including prescribed psychotropic medications. Non-formulary prescription medications shall not be provided to Patient Inmates except in conjunction with Non-Routine Medical Care.
- iii. All medical care provided to Patient Inmates whose committing county is Monterey shall be considered Routine Medical Care for the purposes of this Agreement.
  - iv. For the purposes of this Agreement, Non-Routine Medical Care shall be defined as major medical operations or surgeries (such as heart transplants); continuation of experimental medication; services that cannot be provided onsite at the MCJ; dialysis services, whether onsite or otherwise; and emergency medical care.
  - v. If a Patient Inmate requires Non-Routine Medical Care, Contractor shall notify the DSH Contract Manager or designee immediately in writing and by phone for pre-approval. For such patients, the DSH further reserves the right to either admit them to a state hospital for treatment or require Contractor to provide Non-Routine Medical Care. In the event the DSH directs Contractor to provide Non-Routine Medical Care, the DSH shall either direct Contractor to instruct the facility providing care to invoice the committing county, or to invoice the DSH Contract Manager directly for the full cost of care provided. Should the DSH elect to require Contractor to provide the Non-Routine Medical Care, Contractor shall ensure that the Patient Inmate is provided care at a facility designated by the DSH Contract Manager, in accordance with the preferences of the committing county. Contractor shall notify the committing county of the Patient Inmate's transfer to and from the JBCT program and the designated facility providing care.
  - vi. In the event of an emergency, and for Patient Inmates whose committing county is not Monterey, Contractor shall proceed immediately with necessary medical treatment. In the event of such an emergency, the DSH shall either direct Contractor to instruct the facility providing care to invoice the committing county, or to invoice the DSH Contract Manager directly for the full cost of care provided. In such an event, Contractor shall notify the DSH immediately regarding the nature of the illness or injury as well as the types of treatment provided. Contractor shall make reasonable efforts to ensure that Patient Inmates are treated at facilities preferred by the committing county or otherwise that, once a patient is stable enough for transfer, is transferred to such a facility.
- L. For all Routine and Non-Routine Medical Care, Contractor shall be responsible for the security and transportation, including emergency transportation. Contractor agrees that all such costs are included in the per diem rate charged to the DSH.
- M. Upon Restoration of Competency:  
Contractor shall be responsible for coordinating with the committing counties' behavioral health programs for the continued mental health care, crisis intervention, ongoing counseling and care, and psychotropic medication compliance for the male Patient Inmates restored to competence and transferred from the JBCT program.
- N. 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

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

- O. 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.
- P. 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.
- Q. This Agreement may be canceled at any time by Contractor, in writing, with 50 days' advance notice. The DSH may terminate this 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. The DSH shall provide an orientation of the JBCT program to Contractor at the discretion of the DSH. Such orientation shall include an overview of State policies and procedures, the DSH JBCT Policy and Procedures Manual, and appropriate statutes related to the JBCT program.
- B. The DSH shall be responsible for the development and design of the DSH JBCT Policy and Procedures Manual concerning JBCT program operations and treatment consistent with State and federal laws and the DSH policies and procedures.
- C. 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 the 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 the 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 check on the quality of work. Payment shall not be provided for services deemed unacceptable by the DSH Contract Manager and/or their designee.
  - 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 to perform the audit and examination, including but not limited to, accountants, consultants, or

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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. **Penalties:** Should Contractor not provide all services, including any and all required reports in a timely manner, the DSH may choose to terminate this Agreement. 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 one additional term of up to three years, and to add funding sufficient for these periods 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.

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

**1. PROGRAM ELEMENTS**

**A. Referral Document Collection Prior to Admission**

Contractor shall coordinate with the committing court to ensure all required documents listed under Penal Code section 1370, subdivision (a)(3) are provided by the court for all male Patient Inmates upon admission. Contractor shall provide copies of these documents to the DSH immediately upon request, no later than 24 hours from receipt of the request. Once the committing county's felony IST referrals are being managed by the DSH Patient Management Unit (PMU), the PMU shall coordinate with the committing court and provide all required documents to Contractor.

**B. Referrals Determined to be Not Suitable for Admission**

Should Contractor determine, based on clinical or custodial considerations, that a felony IST referral is not suitable for admission into the JBCT program, Contractor shall inform the DSH Contract Manager and the PMU immediately in writing or by phone. Immediately upon making this determination, Contractor shall provide all required documents listed under Penal Code section 1370, subdivision (a)(3) to the PMU no later than 24 hours. Once the committing county's felony IST referrals are being managed by the PMU, the transmission of these documents will no longer be required.

**C. Removal of Patient Inmates No Longer Clinically Suitable**

- i. Upon admission, Contractor shall assess each male Patient Inmate to ascertain if trial competence is likely and medical issues would not pose a barrier to treatment. At the discretion of the DSH Contract Manager, and if requested in writing, Contractor shall review and agree upon new male Patient Inmates being forwarded for admission and/or retention into the JBCT program, which may contraindicate fast-track jail treatment.
- ii. Should Contractor determine, based on clinical considerations or other factors, that a male Patient Inmate admitted into the JBCT program is no longer clinically suitable for participation in the program, Contractor shall contact the DSH Contract Manager to discuss treatment options. Contractor agrees that the decision to remove such a Patient Inmate from the JBCT program is at the sole discretion of the DSH, and the DSH shall not unreasonably withhold such permission.
- iii. Should Contractor and the DSH determine a male Patient Inmate should be removed from the JBCT program, Contractor shall continue to provide treatment until arrangements are made to admit the male Patient Inmate to a state hospital. Within seven days of making this determination, Contractor shall also provide the following additional documents to the PMU including, but not limited to:
  - 1) Transfer Notification Letter;
  - 2) Court Reports, if due or submitted;
  - 3) 90-Day Progress Report, if due or submitted;
  - 4) Psychiatry Intake Assessment;
  - 5) The three most recent Psychiatry Progress Notes;
  - 6) Psychology Intake Assessment;
  - 7) 30-day Psychologist Competency Re-Assessments;

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- 8) Social Work/Clinician Intake Assessment;
- 9) Nursing Intake Assessment;
- 10) Informed Consent;
- 11) Medication Orders;
- 12) Laboratory Results, if any; and
- 13) Discharge Summary.

#### D. Psychological Assessment Protocol

- i. Contractor shall administer a battery of individualized psychological assessments and testing upon admission. Standardized and semi-structured psychological tests shall be utilized to complete a preliminary assessment of the male Patient Inmate's current functioning, likelihood of malingering, and current competency to stand trial. Impediments to trial competency will be ascertained through the use of preliminary assessment instruments including, but not limited to:
  - 1) Clinical Interview. The psychologist shall obtain information pertaining to the male Patient Inmate's psychosocial, psychiatric, and legal history as well as barriers to competency. *The Mental Status Exam (MSE)* shall also be included in the interview;
  - 2) Assessment of Malingering (as clinically indicated). *Miller Forensic Assessment of Symptoms (M-FAST)*;
  - 3) Assessment of Trial Competence. *Evaluation of Competency to Stand Trial-Revised (ECST-R)*, *the MacArthur Competence Tool – Criminal Adjudication (MacCAT-CA)*, and/or *the Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR)*; and
  - 4) Severity of Psychiatric Symptoms. *Brief Psychiatric Rating Scale (BPRS)*.
- ii. Contractor shall administer additional malingering-specific assessments, integrating additional observable data reported by various disciplines on a 24/7 basis if preliminary assessment suggests the presence of malingering. If the screening instruments administered during the preliminary assessment raise suspicion that the primary barrier to trial competency is malingering, the following may also be utilized including, but not limited to:
  - 1) *Structured Interview of Reported Symptoms- Second Edition (SIRS-2)*;
  - 2) *Test of Memory Malingering (TOMM)*;
  - 3) *Georgia Atypical Presentation (GAP)*;
  - 4) *Structured Inventory of Malingered Symptomatology (SIMS)*; or
  - 5) *Inventory of Legal Knowledge (ILK)*.
- iii. Contractor may administer further cognitive assessments based on the specific cognitive deficit identified during the preliminary assessment. If the screening instruments conducted during the preliminary assessment raise suspicion that the primary barrier to trial competency is cognitive deficits, the following may also be utilized including, but not limited to:
  - 1) *Repeatable Battery for the Assessment of Neuropsychological Status (RBANS)*;
  - 2) *Wide Range Achievement Test 4 (WRAT4)*; or
  - 3) *Montreal Cognitive Assessment (MoCA)*.

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- iv. Contractor may administer additional instruments assessing personality to complete further assessment of psychological functioning including, but not limited to:
  - 1) *Personality Assessment Inventory (PAI)*; or
  - 2) *Minnesota Multiphasic Personality Inventory-2 (MMPI-2)*.
- v. Contractor shall conduct follow-up assessments of the male Patient Inmate's current competency to stand trial at 30-day intervals or more frequently as needed using any of the following including, but not limited to:
  - 1) *Evaluation of Competency to Stand Trial-Revised (ECST-R)*;
  - 2) *Revised Competency Assessment Instrument (R-CAI)*;
  - 3) *MacArthur Competency Assessment Tool – Criminal Adjudication (MacCAT-CA)*; or
  - 4) *Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR)*.

E. Individualized Treatment Program

- i. Contractor shall identify specific deficits that result in incompetence to stand trial upon admission. Each deficit shall be listed on the individualized treatment plan and shall be targeted in the male Patient Inmate's treatment. Contractor shall use current standardized competency assessment tools, such as the MacArthur Competency Assessment Tool, after considering the totality of clinical and forensic circumstances.
- ii. Contractor shall provide an individualized restoration program according to the treatment approach subscribed to by the individual treatment teams and indicated by the male Patient Inmate's psychiatric condition, level of functioning, and legal context.
- iii. Contractor shall tailor individualized treatment regimens to the male Patient Inmate's specific barrier(s) to trial competency. Deficits identified in the competency assessment upon admission to the JBCT program shall be listed in the individual treatment plan and addressed by specific treatment interventions.
- iv. Contractor shall conduct case conferences weekly or as needed to re-assess male Patient Inmates' progress toward restoration of competence to allow the treatment teams to measure whether their treatment interventions are working, and whether additional treatment elements need to be incorporated into Patient Inmates' treatment plans.

F. Multi-modal, Experiential Competency Restoration Educational Experience and Components

- i. Contractor shall provide educational materials presented in multiple learning formats by multiple staff to each male Patient Inmate, 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 or mock trial.
- ii. Contractor shall address the following elements in the education modalities of the competency restoration program including, but not limited to:
  - 1) Criminal charges;
  - 2) Severity of charges, namely Felony vs. Misdemeanor;
  - 3) Sentencing;

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- 4) Pleas including, Guilty, Not Guilty, Nolo Contendere and Not Guilty by Reason of Insanity;
- 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;
- 11) Probation and Parole; and
- 12) Individualized instruction as needed.

- iii. Contractor shall provide additional learning experience through increased lecture time, as well as individual instruction to male Patient Inmates who are incompetent due to specific knowledge deficits caused by low intelligence but who may be restored to competence with additional exposure to the educational material.

G. Medication Administration and Consent

- i. Contractor shall obtain proper authorization (e.g., informed consent for treatment, medication issues) from the Patient Inmates 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 male Patient Inmate to the JBCT program and the treating psychiatrist determines that psychotropic medication has become medically necessary and appropriate, Contractor shall request that the court make an order for the administration of involuntary psychotropic medication.
- iv. Contractor shall administer involuntary psychotropic medication when medically necessary and appropriate, upon the issuance of the court order.

H. Suicide Prevention/Adverse Events

Contractor shall develop a suicide prevention program and assessment procedures that shall include an adverse sentinel event review process. Contractor shall submit written suicide prevention procedures to the DSH Contract Manager for approval prior to activation of the JBCT program and annually thereafter.

I. 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 includes, but is not limited to, the following data elements:

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Term	Definition
Patient Name:	Last and First name of patient
Case Number:	Court assigned case number for each individual court case. It can typically include letters and numbers.
Booking Number:	Number that County Jail issues to an individual (per Forensics)
Gender:	Male or Female
Date of Birth:	Birthdate, Age can be determined using this date
Ethnicity:	Type of social group that has a common national or cultural tradition. <i>Caucasian/White, African American/Black, American Indian/Alaska Native, Asian, Native Hawaiian/Other Pacific Islander, Hispanic, Other</i>
Language Spoken:	Type of language spoken
Interpretive Services Utilized (YES/NO):	Was Interpretive services utilized? Yes or No
Referring County:	County of referral and/or commitment
Commitment Date:	Date of Commitment
Packet Received Date:	Date Packet Received (including incomplete required documents)
Packet Completed Date:	Date Packet completed (including all completed required documents)
Reason for Ongoing Pending Status:	Provide a detail reason why the delay of admission
Screening Evaluation Completed Date:	Date Screening Evaluation was completed
Screening Outcome:	Outcome results of patient screened. Accepted or Rejected
Reason for Screening Rejection:	Detail regarding reason for screening rejection. Bypassed/Triaged, Non-Roc, Medication, Substance-Related, Higher Level-of-Care, Other.
Admission Date:	Date of Admission
Involuntary Medication Order (YES/NO):	Is there a current court ordered IMO in place? Yes or No
IMO Effective Date:	Date IMO was effective on, this is the same as their 1370 commitment date
Medication Adherence:	Whether patients take their medications as prescribed. Fully Adherent, Intermittently Adherent, Refusing. (If applicable to program)
Did I/P Receive Invol Meds (YES/NO):	Was involuntary medication administered to patient? Yes or No
Date Invol Meds Initiated:	Date of involuntary medication administered
Disposition of Discharge/Transfer :	Final determination of patients status. Restored or DSH
Reason for Discharge/Transfer:	Detail regarding reason for patients discharge or transfer.
Date Referred to DSH for Transfer:	Date Referred to DSH for Transfer
Discharge/Transfer Date:	Date of Discharge and or Date of Transfer
Discharge/Transfer Location:	Location where patient will be discharged to. Jail, Atascadero SH, Coalinga SH, Metropolitan SH, Napa SH, Patton SH, Other: Must update Notes with Specific location.
Reason for delayed Discharge:	Provide a detail reason why the delay of discharge.
Date ROC Certificate Submitted to Court:	Date that ROC Certificate was submitted to Court
Primary Diagnosis at Admission:	Patients primary Diagnosis at time of Admission
Diagnosis at Discharge:	Patients primary Diagnosis at time of Discharge
Diagnosis of Malingering? (YES/NO):	Did the patient have a Malingering Diagnosis at any point during their stay in JBCT? Yes or No

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- ii. Contractor shall submit daily census reports to the DSH upon the first male Patient Inmate admission, unless otherwise requested by the DSH.
- iii. Contractor shall submit a summary performance report within 30 days of the end of the contract term, to include but not be limited to, the information stated above and:
  - 1) The total number of individuals restored to competency;
  - 2) The average number of days between program admission and discharge;
  - 3) The total cost of the program by budget category: personnel, operating expenses, administrative expense, custody and housing, and other direct operating costs as well as overall cost per Patient Inmate treated and the costs for those found to be malingering;
  - 4) The cost per cycle of treatment;
  - 5) A description of all implementation challenges; and
  - 6) Special incident reports and notification to the DSH of emergencies.

#### G. Reporting Requirements

- i. Contractor shall submit a written report to the court, the community program director of the county or region of commitment, and the DSH Contract Manager concerning the male Patient Inmate's progress toward recovery of trial competence within 90 days of a commitment. The report shall include a description of any antipsychotic medication administered to the male Patient Inmate and its effects and side effects, including effects on the male Patient Inmate's appearance or behavior that would affect the male Patient Inmate's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner.
- ii. Contractor shall verbally report any escape within 24 hours to the court that made the commitment, the prosecutor in the case, the Department of Justice, and the DSH Contract Manager, with a written report to follow within five business days.
- iii. Contractor shall report via phone or email to the DSH Contract Manager when a Patient Inmate who is currently receiving treatment in the JBCT program is involved in a Serious Incident. "Serious Incidents" shall include, but not be limited to, causing serious harm to self or others and committing a new felony offense. Such reporting shall take place within 24 hours of the Serious Incident. Contractor shall respond to Serious Incidents and law enforcement issues, with coverage 24 hours per day, seven days a week, and with the capacity to arrange for or provide emergency transportation of Patient Inmates. Contractor shall maintain a Serious Incident file that is separate from the Patient Inmate record.
- iv. Contractor shall file a certificate of restoration with the court that made the commitment when the Program Director or their designee determines that the Patient Inmate has regained trial competence.

## 2. TREATMENT PROTOCOL

- A. JBCT is an intensive, milieu-based treatment program that quickly facilitates competency through a combination of group and individual therapy.

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- B. Group therapy is central to the restoration process, and Contractor shall provide treatment daily to male Patient Inmates. Group content should include one of the four group treatment domains: *competency education, understanding and management of mental illness, physical exercise, and mental/social stimulation*. Many group topics can be assimilated into the groupings, e.g., mock trial, music-based competency treatment, etc.
- C. Contractor shall provide individual sessions per day to each male Patient Inmate. Individual sessions may be used to check-in with male Patient Inmates and/or discuss key legal elements of the individual's case that may be too sensitive for group discussion. Specific competency issues can best be addressed individually, e.g., a Patient Inmate understands court proceedings but struggles to apply the knowledge to their individual case.
- D. Contractor's psychiatrist shall see each male Patient Inmate weekly. A psychiatric assessment is a component of the admission process, and more frequent appointments shall be available as needed.
- E. Together on a weekly basis, the multi-disciplinary treatment team shall review:
  - i. Progress of all male Patient Inmates admitted within 30 days,
  - ii. At subsequent 14-day intervals thereafter, and
  - iii. When a male Patient Inmate is under consideration for discharge. The multi-disciplinary treatment team shall be responsible for providing the committing court progress reports pursuant to Penal Code section 1370 subdivision (b)(1).

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**3. SAMPLE JBCT GROUP THERAPY SCHEDULE**

	<i>Monday</i>	<i>Tuesday</i>	<i>Wednesday</i>	<i>Thursday</i>	<i>Friday</i>
0800-0850	Staff Member 1: Therapeutic Movement	Staff Member 2: Wake-up Activity	Staff Member 2: Wake-up Activity	Staff Member 2: Wake-up Activity	Staff Member 3: JBCT Incentive Store
0900-0950	Staff Member 3: Wellness Education	Staff Member 4: My Life, My Choice	Staff Member 2: Arts & Crafts	Staff Member 4: What Would You Do?	Staff Member 4: Activity of Daily Living Groups
1000-1050	Staff Member 5: Current Events	Staff Member 3: Wellness Education	Staff Member 2: Life Skills	Staff Member 3: Wellness Education	
	Staff Member 6: Competency Education	Staff Member 2: Life Skills	Staff Member 3: Wellness Education	Staff Member 2: Table Games	
1100-1150	Lunch	Lunch	Treatment Team Meeting: Grand Rounds	Lunch	Lunch
1200-1250	Individual Contacts	Staff Member 2: Brain Fitness	Lunch	Staff Member 2: Brain Fitness	Individual Contacts
1300-1350	Staff Member 6: Competency Education	Staff Member 4: Court Activity	Staff Member 4: Competency Education	Staff Member 4: My Life, My Choice	Staff Member 5: Outdoor Activity
	Staff Member 2: Table Games				
1400-1450	Staff Member 5: Trivia Challenge	Individual Contacts	Staff Member 7: Working with Your Attorney	Individual Contacts	JBCT Cinema
1500-1530	Individual Contacts	Chaplain: Bible Study	Individual Contacts	Individual Contacts	

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**4. SAMPLE PROPOSED JBCT STAFFING MODEL:**

<b>Number of Beds</b>	10 Beds
<b>Treatment Team Staffing*</b>	Psychiatrist – 0.2 Psychologist – 1.0 Mental Health Clinician – 1.0 Competency Trainer – 1.0
<b>Administrative Staff*</b>	Administrative Assistant – 1.0
<b>Custodial Staff*</b>	Deputy – 2.0
<i>*Number of positions reflect full-time equivalent (FTE) values</i>	

<b>Number of Beds</b>	11 Beds (effective July 1, 2022)
<b>Treatment Team Staffing*</b>	Psychiatrist – 0.3 Psychologist – 1.0 Mental Health Clinician – 1.0 Competency Trainer – 1.0
<b>Administrative Staff*</b>	Administrative Assistant – 1.0
<b>Custodial Staff*</b>	Deputy – 2.0
<i>*Number of positions reflect full-time equivalent (FTE) values</i>	

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Exhibit B, Budget Detail and Payment Provisions

**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 male Patient Inmate admission 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.
- C. 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.
- D. The DSH makes no guarantee, either written or implied, as to the actual amount of funds that will be expended under this Agreement.
- E. Contractor shall not bill or seek reimbursement from DSH for any goods or services if Contractor received 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  
Attention: Accounting Office  
1600 Ninth Street, Room 141  
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.

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- 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 **\$3,380,265.00**.
- B. Upon the first male Patient Inmate admission, the per diem rate shall be \$441.00 per bed, totaling \$4,410.00 per day for all ten **Allocated Beds**. Upon invoicing, Contractor shall clearly identify the number of days in the month that services were provided.

Effective July 1, 2022, the daily per diem rate for the **Non-Allocated Beds** shall be **\$441.00** per Patient Inmate per each day of treatment. Upon invoicing, Contractor shall clearly identify the number of Patient Inmates multiplied by the number of actual treatment days in the month that services were provided.

- C. 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 actually rendered.

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- D. Contractor must submit all invoices within a reasonable time but, no later than 12 months from the date that services were provided. If Contractor fails to provide invoices within 12 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.
- E. Contractor shall not be reimbursed for any travel-related expenses. All travel shall be at the expense of Contractor.

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 Exhibit B-1, Sample Invoice

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

[Insert Contractor's Department company logo/address]

**INVOICE**

DATE	INVOICE #

Department of State Hospitals  
 Attn: Accounting Office  
 1600 9<sup>th</sup> Street, Room 141  
 Sacramento, CA 95814

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

Allocated – 10-Bed Maximum				
Per Diem Rate*		Days in Treatment		Total for [insert month being invoiced]
\$4,410.00	X	[Insert number of days in the month being invoiced]	=	\$ _____

*\*Per Diem Rate of \$441.00 Per Bed*

Non - Allocated Beds				
Per Diem Rate*		Days in Treatment		Total for [insert month being invoiced]
\$441.00	X	[Insert number of days in the month being invoiced]	=	\$ _____

*\*Per Diem Rate of \$441.00 Per Bed*

<b>Invoice Total for [insert month being invoiced]:</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]

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Exhibit C, General Terms and Conditions

**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 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.~~
5. ***INDEMNIFICATION: In the event the State Department of State Hospitals and a county jail treatment facility are determined to be comparatively at fault for any claim, action, loss, or damage which results from their respective obligations under such a contract, each shall indemnify the other to the extent of its comparative fault.***
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 Contractor under this Agreement and the balance, if any, shall be paid to 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.

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Exhibit C, General Terms and Conditions

9. **RECYCLING CERTIFICATION:** 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 307 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.

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15. **ANTITRUST CLAIMS:** Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, 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.

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18. **PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, 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).)

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Exhibit D, Special Terms and Conditions

**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 the DSH for its prior written approval. No work shall be subcontracted without the prior written approval of the DSH. Upon the termination of any subcontract, the 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 the 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 the 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 the DSH harmless for any costs, losses, or claims, including reasonable attorney fees, resulting from its subcontractors.

**2. PUBLICATIONS AND REPORTS:**

- A. The DSH reserves the right to use and reproduce all publications, reports, and data produced or delivered pursuant to this Agreement. The 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 the 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 the DSH Contract Manager, at least once a month to the 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 the 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 the 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.

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

- A. The DSH's staff shall be permitted to work side-by-side with Contractor's staff to the extent and under conditions as directed by the DSH Contract Manager. In this connection, the 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 the 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 the DSH's actions on the same, except to the DSH's staff, Contractor's own personnel involved in the performance of this Agreement, or as required by law.
- D. If requested by the 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 the DSH and shall supply the 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 the DSH, Contractor may at its own expense and upon written approval by the 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, expressed or implied, or assumes any legal liability whatsoever for the contents of this document. Nor does any*

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*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 the 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 the DSH. Such data shall be property of the State of California and the DSH.
- D. Prior to the expiration of any legally required retention period and before destroying any data, Contractor shall notify the DSH of any such contemplated action; and the DSH may within 30 days of said notification determine whether or not this data shall be further preserved. The DSH shall pay the expense of further preserving this data. The 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 the DSH's operation, which are designated confidential by the State or the 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 the DSH determines that the data and information are inadequately protected by Contractor or its subcontractors, the DSH shall provide notice of its determination and Contractor and/or its subcontractors shall improve the protections to the 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. The DSH's determination as to satisfactory work shall be final, absent fraud or mistake.

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**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 the 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 the 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. The 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 the 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, the 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 the 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, the 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.

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**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. The 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 the DSH.

**16. FORCE MAJEURE:**

- A. Neither the 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. 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.

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**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 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 the 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 citizen, 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.

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- 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.

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- 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.

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

These Confidentiality and Information Security Provisions (for Health Insurance Portability and Accountability Act/Health Information Technology for Economic and Clinical Health Act (HIPAA/HITECH) 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., the Lanterman-Petris-Short Act, Civil Code section 1798 et seq., the Information Practices Act of 1977, Health and Safety Code section 123100 et seq., the Patient Access to Health Records Act, Title 42, Code of Federal Regulations (C.F.R.) part 431.300 et seq., 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) (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 the 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 the DSH, pursuant to Contractor's agreement with the DSH. When applicable, 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 this Agreement between the 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.

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**B. Specific Definitions**

- i. *Contractor*. Contractor shall have the same meaning as the term "business associate" at 45 C.F.R. section 160.103.
- ii. *HIPAA Rules*. HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and 164.
- iii. *Confidential Information*. Confidential information shall mean information or data that is Protected Health Information or Personal Information as defined herein.
- iv. *Personal Information (PI)*. Personal Information shall have the same meaning as defined in Civil Code section 1798.3, subdivision (a).
- v. Required by law, as set forth under 45 C.F.R. section 164.103, 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.
- vi. *Security Incident*. Security Incident shall mean the 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 with respect to electronic confidential information, to prevent use or disclosure of confidential information other than as provided for by this Agreement with DSH;
- iii. report to DSH any use or disclosure of confidential information not provided for by this 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, and any security incident of which it becomes aware;

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- iv. in accordance with 45 C.F.R. sections 164.502(e)(1)(ii) and 164.308(b)(2), 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 the DSH or to an Individual in accordance with 45 C.F.R. section 164.524 and California Health and Safety Code section 123100 et seq. Designated Record Set shall mean the group of records maintained for the 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 the DSH. Contractor shall use the forms and processes developed by the DSH for this purpose and shall respond to requests for access to records transmitted by the DSH within 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 the DSH to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e);
- vii. if Contractor receives data from DSH that was provided to the DSH by the Social Security Administration, upon request by the DSH, Contractor shall provide the 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 the DSH pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy the DSH's obligations under 45 C.F.R. section 164.526;
- ix. to document and make available to the DSH or (at the direction of the 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 and 42 U.S.C. section 17935(c). 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, comply with the requirements of Subpart E that apply to the DSH in the performance of such obligation(s); and

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- xi. make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA regulations.

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

- A. Except as otherwise provided in this Agreement between Contractor and DSH, Contractor, may use or disclose DSH confidential information to perform functions, activities, or services identified in this 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 this 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.

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## 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 800-68 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 this 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.

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**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 this 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 eight 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.

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**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 Program Contract Manager</b>	<b>DSH Chief Privacy Officer</b>	<b>DSH Chief Information Security Officer</b>
See the Scope of Work exhibit for Program Contract Manager	Chief Privacy Officer Office of Legal Services 1600 9 <sup>th</sup> Street, Room 433 Sacramento, CA 95814  Email: <a href="mailto:jennifer.schwartz@dsh.ca.gov">jennifer.schwartz@dsh.ca.gov</a> Telephone: (916) 654-2319	Chief Information Security Officer Information Security Office 1600 9th Street, Suite 250 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

**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 this 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 this Agreement between Contractor and DSH for any reason, Contractor shall return, at its sole expense, to the 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

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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:**

- B. 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.
- C. **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 this 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.
- D. **No Third-Party Beneficiaries.** Nothing expressed or implied in the terms and conditions of this 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.
- E. 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.
- F. A reference in the terms and conditions of this Agreement between DSH and Contractor to any HIPAA regulation relates to that section in effect or as amended.
- G. The obligations of Contractor under this Exhibit E shall survive the termination or expiration of this Agreement.

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

- A. DSH may immediately terminate this 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.

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**19. TERMINATION FOR CAUSE:**

- A. In accordance with 45 C.F.R. section 164.504(e)(1)(ii), 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 if Contractor has breached a material term of this Exhibit and cure is not possible.

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Exhibit F, Information Privacy and Security Requirements  
(Non-HIPAA/HITECH Act Contracts)

**EXHIBIT F**  
**INFORMATION PRIVACY AND SECURITY REQUIREMENTS**  
**(Non-HIPAA/HITECH Act Contracts)**

***This Exhibit F is not applicable to this Agreement.***