

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER 24-79017-000	PURCHASING AUTHORITY NUMBER (If Applicable) DSH-4440
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1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Department of State Hospitals

CONTRACTOR NAME

San Bernardino County - Department of Behavioral Health

2. The term of this Agreement is:

START DATE

July 1, 2024

THROUGH END DATE

June 30, 2029

3. The maximum amount of this Agreement is:

\$24,874,000.00

Twenty-Four Million Eight Hundred Seventy-Four Thousand Dollars and Zero Cents

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

Exhibits	Title	Pages
Exhibit A	Scope of Work	13
Exhibit A-1	Deliverables	1
Exhibit B	Budget Detail and Payment Provisions	4
+ - Exhibit C	General Terms and Conditions	5
+ - Exhibit D	Special Terms and Conditions	10
+ - Exhibit E	Confidentiality and Information Security Provisions (HIPAA Business Associate Agreement)	10

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

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

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

CONTRACTOR

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

San Bernardino County - Department of Behavioral Health

CONTRACTOR BUSINESS ADDRESS

303 E. Vanderbilt Way

CITY

San Bernardino

STATE

CA

ZIP

92415

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

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STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Department of State Hospitals

CONTRACTING AGENCY ADDRESS

1215 O Street, MS-1

CITY

Sacramento

STATE

CA

ZIP

95814

PRINTED NAME OF PERSON SIGNING

Dominique Williams

TITLE

Chief, Business Management Branch

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

WIC Code 4361.6 (2) (a)

EXHIBIT A
SCOPE OF WORK

1. CONTRACTED PARTIES:

The County of San Bernardino – Department of Behavioral Health and/or their authorized designee, hereafter referred to as “Contractor,” agrees to provide services for a Diversion Program as defined herein pursuant to the terms and conditions of this Agreement. The Department of State Hospitals is hereafter referred to as “DSH”.

2. SERVICE LOCATION:

The services shall be performed at various locations throughout Contractor’s area of jurisdiction.

3. SERVICE HOURS:

Core Treatment Services shall be provided during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except state holidays, in a community setting. Contractor shall provide access to crisis mental health and wraparound treatment services in community settings 24 hours per day, seven days per week.

4. PROJECT REPRESENTATIVES:

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

DSH Contract Manager:	
Section/Unit: Community Forensic Partnerships Division	
Attention: Jessica Montue Health Program Specialist I	
Address: 1215 O Street, MS-10 Sacramento, CA 95814	
Phone: (916) 302-4236	Fax: N/A
Email: Jessica.Montue@dsh.ca.gov	

DSH Administrative Contact:	
Section/Unit: Community Forensic Partnerships Division	
Attention: Adrian Gilani Associate Governmental Program Analyst	
Address: 1215 O Street, MS-10 Sacramento, CA 95814	
Phone: 916-562-3813	Fax: N/A
Email: Adrian.gilani@dsh.ca.gov	

County Contract Manager:	
Section/Unit: San Bernardino County – Department of Behavioral Health	
Attention: Dr. Alyce Belford	
Address: 303 E. Vanderbilt Way, San Bernardino, CA 92415	
Phone: 909-388- 0889	Fax:
Email: Alyce.Belford@dbh.sbcounty.gov	

County Health Services Contact:	
Section/Unit: San Bernardino County – Department of Behavioral Health	
Attention: Dr. Alyce Belford	
Address: 303 E. Vanderbilt Way, San Bernardino, CA 92415	
Phone: 909-388-0889	Fax:
Email: Alyce.Belford@dbh.sbcounty.gov	

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. SUMMARY OF WORK TO BE PERFORMED:

A. Project Summary

Contractor shall administer a pre-trial felony mental health Diversion program for individuals charged with felony offenses in its jurisdiction. Program participants are individuals with serious mental disorders who have been charged with certain felony crimes and found by a Court of competent jurisdiction, to qualify for diversion services pursuant to Penal Code (PC) section 1001.36 and Welfare & Institutions Code (WIC) section 4361, hereafter referred to as "Felony Mental Health Diversion Clients." Program is budgeted to provide Mental Health Diversion services to 25 new Felony Mental Health Diversion Clients for an average length of stay of 18 months.

Contractor shall provide clinically appropriate or evidence-based mental health treatment and wraparound services across a continuum of care, as appropriate, to meet the individual needs of Felony Mental Health Diversion Clients. For purposes of this section, "wraparound services" means services provided in addition to the mental health treatment necessary to meet the individual's needs for successfully managing their mental health symptoms and to successfully live in the community.

6. CONTRACTOR RESPONSIBILITIES:

A. Program Plan

Contractor shall submit a written document detailing the program plan developed and agreed to by all county collaborative partners. Said document shall be in compliance with the DSH Diversion Program Manual and identify roles and responsibilities, describe the program from initial identification and evaluation of potential Felony Mental Health IST Clients to program completion, and list all services to be provided in the program. Plan shall also include a detailed program flowchart depicting all stages of the program; an itemized budget plan identifying personnel and operation and equipment costs, and other fund sources; and an outline of program implementation costs as detailed in this agreement. The final county plan must be approved by DSH prior to program activation. Any changes to this plan must be agreed to in writing by both parties.

Contractor shall keep a detailed account of and may invoice for initial program implementation costs incurred under this Agreement at the rate listed in Exhibit B, Budget Detail and Payment Provisions. The implementation costs may include, but are not limited to:

- 1) Staff costs for developing program plan;
- 2) Security deposits for housing sites;
- 3) Initial setup of client rooms as well as treatment and office space;
- 4) Initial administrative operating expenses and equipment;

- 5) Development of an operational clinical and administrative Policy and Procedure Manual; and
 - 6) Orientation and training time for new staff on clinical operations, policies, and procedures.
- B. Felony Mental Health Diversion Clients housed in a community-based diversion program shall remain under the legal and physical supervision of Contractor. Contractor shall be responsible for providing and/or arranging a full range of services and supports including but not limited to medical care, transportation, and patients-rights services.
- C. Contractor retains the right to exclude specific individual Felony Mental Health Diversion Clients from the DSH-funded diversion program based on the terms and conditions set forth in the Client's Diversion plan or based on the criteria agreed upon by collaborative partner agencies at any point during participation in the program.
- D. Contractor shall commence discharge planning a minimum of 30 days prior to program completion, per the requirements in the DSH Diversion Program Manual, to connect individuals to services in the community as defined in this agreement. Contractor shall be responsible for coordinating with behavioral health programs for continued mental health care, crisis intervention, ongoing counseling and care, and psychotropic medication compliance for the Felony Mental Health Diversion Clients.
- E. Client Identification, Evaluation and Treatment

Contractor shall assess and identify which Felony Mental Health Diversion Clients are clinically appropriate for admission into the community-based diversion program.

Upon determining the Felony Mental Health Diversion Client is clinically appropriate, Contractor shall submit to the committing court a community-based placement recommendation. The Contractor, treatment provider, Public Defender's Office, District Attorney's Office and court are encouraged to work together to determine a client's clinical appropriateness for a community-based diversion program, however, only a judge may make a ruling on whether placement is granted.

1) Client Evaluation and Placement

All Felony Mental Health Diversion Clients participating in the felony mental health diversion program must meet the statutory eligibility criteria identified in PC section 1001.36 and WIC section 4361 and have been found Incompetent to Stand Trial (IST) on a current felony charge.

Contractor shall ensure that an evaluation of each Felony Mental Health Diversion Client is conducted in accordance with the requirements in PC section 1001.36 and WIC section 4361 for Felony Mental Health Diversion Clients recommended for placement in a felony mental health diversion by the Court Liaison (Liaison). Contractor shall submit to the committing court a felony mental health diversion recommendation upon determining the Felony Mental Health Diversion Client is clinically appropriate for treatment in the program and meets the following program requirements:

- a) The instant offense is a felony with the exception of certain statutorily excluded crimes (PC §1001.36(d)(1-8))
- b) A guilty plea has not been entered in the case for which DSH-funded Diversion is being recommended.
- c) Client was evaluated and found IST by the court. (WIC §4361(j)(1)(A-B))
- d) Client suffers from a mental disorder with a primary diagnosis from the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), or current edition, excluding antisocial personality disorder, borderline personality disorder, and pedophilia pursuant to PC section 1001.36 subdivision (B)(1) and substance-induced psychosis pursuant to WIC section 4361 (c)(1)(A).

Contractor shall utilize the clinical expertise of multiple staff members (psychologist, social worker, psychiatrist) to determine clinical eligibility via direct examination or interview of the participant while in jail or a stabilization program authorized by WIC section 4361.7, and while in court. Contractor's clinical staff shall access jail mental health records as well as all County Behavioral Health records, and the arrest report in the instant matter to determine eligibility and diagnostic factors and treatment need. Contractor staff shall evaluate candidates for the program using a multidisciplinary approach. An empirically validated violence risk assessment tool must be used to assess eligibility.

Contractor shall ensure that a Court Liaison (Liaison) is responsible for making new court placement recommendations to the Superior Court of California, County Court (Court). The Liaison must be a licensed member of one of the following professions: psychiatrist, licensed psychologist, licensed clinical social worker, licensed professional clinical counselor, licensed marriage and family therapist or a psychiatric nurse with a master's degree. Such licensure shall be maintained in good standing and without conditions at all times. All clinical program staff shall register with the appropriate licensing agency within thirty (30) days of being hired.

Contractor may consider a waiver of the licensure requirement if the Liaison possesses demonstrated ability in the following clinical and administrative skills: clinical and educational qualifications appropriate for forensic assessment of clinical treatment needs and placement readiness; demonstrated ability to provide full participation and leadership in court commitment procedures; capability to participate actively in interagency policy decisions and communication; and ability to monitor and evaluate treatment provided by others.

Contractor is responsible to ensure that each Liaison continues in that capacity until such time they are licensed. A waiver may not exceed five (5) years from the date of employment by, or contract with Contractor. The Contractor is to maintain documentation of staff registration, license, or waiver in the individual's personnel file.

The Court will authorize felony mental health diversion program participation upon determination of client suitability and dangerousness. The Court will determine the terms and conditions of diversion for each participant. The diversion plan will be standardized in that individuals who are Court-ordered to programs must follow treatment plans, housing rules and recommendations as determined by Contractor's clinical team.

2) Individualized Treatment Program

Contractor shall identify specific treatment modalities in the treatment plan which focus on intensive mental health treatment for long-term stabilization with the goal of the client remaining in the community. Treatment modalities and frequencies shall be in accordance with the DSH Diversion Program Manual.

Contractor shall conduct case conferences weekly to reassess the Felony Mental Health Diversion Client's progress to allow the treatment team to measure whether their treatment interventions are working, and whether additional treatment elements need to be incorporated.

Contractor shall maintain clinical records and other program-related documentation for up to seven (7) years. DSH has the right to review the records and documentation upon request. Examples of documentation include but are not limited to treatment plans, logs, data, and individuals' participation in program requirements.

3) Treatment Protocol

Contractor shall follow the Treatment Protocol as outlined in the DSH Diversion Program Manual. The community-based diversion program shall facilitate long-term psychiatric stabilization through a combination of group therapy, individual therapy, medication as medically necessary, intensive case management and other wrap-around supports to facilitate successful participation and transition to ongoing community-based housing and treatment post-diversion participation.

4) Medication Administration and Consent

Contractor shall ensure that clients comply with their prescribed medication, including injectable medication, when ordered by a licensed program physician, as a condition of program participation. Contractor shall obtain client consent in accordance with professional standards of care and court practices and shall utilize strategies to promote and incentivize voluntary psychotropic medication compliance. Compliance shall extend to all laboratory/testing procedures determined necessary by the program physician as a result of the client's participation in the prescribed medication regimen. Contractor shall be notified by the client of all medical treatments and medications they receive from any community physician.

F. Committing Court Reports

Contractor shall submit progress reports to the Court as specified in the placement order to the program.

G. Suicide Prevention/Adverse Events

Contractor shall submit written suicide prevention procedures, which shall include an adverse incident event review process, to the DSH Contract Manager for approval prior to the activation of each treatment facility operated by the Diversion Program and annually thereafter.

H. Community Services

Contractor shall coordinate the provision of support services that are available in Contractor's County for Felony Mental Health Diversion Clients who are receiving treatment by Contractor in the community-based diversion program or in custody. Support services include, but are not limited to, Supplemental Security Income and other benefits, substance use disorder services, primary medical care, case management, and specialty mental health services.

I. Responsibilities for Medical Care

Contractor shall coordinate the full range of medical care for all Felony Mental Health Diversion Clients in the community-based diversion program. Medical care shall be provided through resources available in the community and by leveraging the Felony Mental Health Diversion Client's available benefits and insurance including, but not limited to, Medi-Cal and Medicare.

J. Transportation

Contractor shall be responsible for all security and transportation, including coordinating emergency transportation.

K. Pre-Trial Probation

Contractor may coordinate and provide Pre-Trial Probation services for select Felony Mental Health Diversion Clients who may require a higher level of supervision while out in the community.

L. Client Grievances

Upon admission, Contractor shall provide an orientation and education on the client grievance process for each Felony Mental Health Diversion Client. Contractor shall post the client grievance process in a visible location in an area commonly used by Felony Mental Health Diversion Clients in each facility. Contractor shall submit a copy of the Grievance Process to the DSH Contract Manager as part of the Program Plan, Policy and Procedure Manual, and update the process annually thereafter.

Contractor shall report via email (DSHDiversion@dsh.ca.gov) to the DSH Contract Manager or designee all filed client grievance documents. Contractor must maintain a written log of all client grievances that includes how the grievance was resolved timely. DSH retains the right to review or request a copy of this log.

M. Absent Without Leave (AWOL) or Special Incidents

Within twenty-four (24) hours, Contractor shall report, via email, to the assigned Consulting Psychologist and cc DSHDiversion@dsh.ca.gov inbox if a current client is AWOL or is involved in a Special Incident. A "Special Incident" is a significant patient occurrence or any event which has the potential of adversely affecting the operation of the program. The following occurrences qualify as Special Incidents:

- 1) Suicide or attempt
 - 2) Death of patient
 - 3) Serious injury to or by client
 - 4) Client is AWOL
 - 5) Criminal behavior (including arrests, with or without conviction)
 - 6) Any incident which may result in public or media attention to the program.
- Contractor shall maintain a Serious Incident file that is separate from the Felony Mental Health Diversion Client's record.

Information provided in initial email will not include Protected Health Information (PHI). Initial email will include the following information:

- 1) Date and Time of incident
- 2) Type of incident
- 3) Brief summary of incident
- 4) Any action taken or planned / Disposition of Matter

In the case of an AWOL notification, reporting should also include:

- 1) Date and time of AWOL
- 2) Type of residence client was residing in at time of AWOL
- 3) Current charges

- 4) Current use of or access to weapons (if known)
- 5) Present status or location of patient (if known)

Within 48 hours, the county program is required to submit a written Special Incident Narrative Report, utilizing Form DSH 1725a, to the assigned DSH Consulting Psychologist and cc DSHDiversion@dsh.ca.gov inbox. PHI should not be included in the report.

Contractor must maintain a written log of all AWOL or Special Incidents that includes the information included above, as well as client identifying information, that must be made available to DSH upon request.

N. Revocation/Hospitalization

Contractor retains the right to revoke specific individual Felony Mental Health Diversion Clients from the community-based felony mental health diversion program for security and classification reasons at any point during treatment. Prior to requesting revocation, Contractor will work with the assigned DSH Consulting Psychologist to assess if placement in a DSH Community Inpatient Facility for additional psychiatric stabilization would be appropriate.

Contractor shall provide consultation to Felony Mental Health Diversion Clients and request judicial admonishment prior to requesting revocation/hospitalization. In the event the judicial admonishment request is unsuccessful or does not result in custody remand, or the Felony Mental Health Diversion Client commits an offense which requires revocation from the program per PC section 1001.36, and the Felony Mental Health Diversion Client cannot be maintained in the community, the Court shall notify DSH. Contractor shall cooperate with law enforcement agencies, court officials, and DSH to ensure continuity of care for Felony Mental Health Diversion Clients during the revocation/hospitalization process.

Contractor shall also report in writing via email to courtreferrals@dsh.ca.gov and the DSH Contract Manager or designee within two (2) business days of revocation. Within seven (7) days of a court revocation, Contractor shall provide documents to the DSH Patient Management Unit including but not limited to:

- 1) Psychiatry intake assessment;
- 2) Three most recent Psychiatry Progress notes;
- 3) Psychology intake assessment;
- 4) Social Work/Clinician intake assessments;
- 5) Nursing intake assessments;
- 6) Informed consent;
- 7) Medication orders;
- 8) Laboratory results, if any; and
- 9) Discharge summary.

O. Data Reporting Requirements

DSH will provide Contractor with the list of required data variables, data dictionary, submission format and timelines, system and reporting requirements. Contractor shall provide DSH with complete data sets as determined by DSH. Any overdue, missing, incomplete, and/or inaccurate data sets may be cause for issuance of STD 209, Invoice Dispute Notification. Data that is not provided timely or is otherwise deemed incomplete or inaccurate may result in the termination of a contract, as determined by DSH on a case-by-case basis.

DSH reserves the right to amend the data dictionary at any time and will provide contractor sixty (60) days advanced notice of any such change.

DSH is in the process of developing a cloud-based application to address manual data collections. Upon deployment, DSH will be transitioning all Diversion program data tracking into the cloud-based application. Contractor shall utilize the cloud-based application and must complete all fields identified within the application to track the patient's pre-admission, admission and discharge flows and other variables as indicated within the timeframes specified by DSH.

P. Annual Expenditure Reporting Requirements

Contractor shall track actual Diversion expenditures and shall submit an annual report itemizing Diversion expenditures, including Administrative Overhead (see item below) to DSHSAC_DiversionFiscalReports@dsh.ca.gov within sixty (60) days after the close of the month of June during the term of this agreement. A final report itemizing Diversion expenditures shall be due within sixty (60) days after the termination of this agreement. Should Contractor not provide the required reports in a timely manner, DSH may choose to issue a STD 209, Invoice Dispute Notification, or to terminate this Agreement. Additionally, DSH may find the contractor to be not responsive in provision of services and evaluate this in future contracting opportunities.

Q. Administrative Overhead

Contractor shall track actual expenditures and overhead costs directly related to care and services pursuant to Exhibit A. Administrative overhead is limited to 15% of direct client care costs. See Exhibit B, Budget and Payment Provisions for invoice instructions.

R. Contractor shall review with each Client upon admission the terms and conditions of their court order(s) and participation in the Felony Mental Health Diversion program.

S. Contractor shall provide services as outlined in this Agreement and DSH Diversion Program Manual. Contractor shall be responsible to fulfill the requirements of the Agreement and shall incur expenses at its own risk and invest sufficient time and capital to fulfill the obligations as contained herein.

- T. Contractor acknowledges that, in addition to other auditing and/or compliance-review rights retained by DSH under this Agreement, DSH may monitor Contractor for compliance with administration and treatment of patients. Contractor is expected to show documentation for any given period which may include, but not be limited to, timesheets for employees, scheduled appointments for each employee, patient records, or other methods to validate percentages of time dedicated to the Diversion program. Contractor acknowledges that this information may be compared to the contracted requirements. Contractor is required to ensure that staff positions funded pursuant to Agreement are reserved solely for the provision of Diversion services, regardless of caseload size.
- U. Contractor agrees that DSH shall have access to facilities, programs, documents, records, staff, patients, or other material or persons DSH deems necessary to perform monitoring and auditing of services rendered, in its sole and absolute discretion. Contractor further acknowledges that while DSH may monitor Contractor program operations to determine compliance with DSH policies, regulations, statutes, the DSH Diversion Program Manual, and contract requirements, Contractor shall be solely responsible for its compliance with State and Federal laws and shall seek its own legal counsel for advice on these laws.
- V. Contractor shall participate in any job-related training provided or required by DSH.
- W. 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 DSH. Contractor agrees that failure by itself or its subcontractors to provide evidence of licensing, permits, or certifications shall constitute a material breach for which DSH may terminate this Agreement with cause.
- X. 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 DSH in writing.
- Y. Unless otherwise specified, this Agreement may be canceled at any time by Contractor, in writing, with 50 days' advance notice. DSH may terminate the Agreement pursuant to section 7 of Exhibit C if Contractor or its subcontractors fails to comply with a federal, state, or local law and the noncompliance, based on the facts and circumstances, would constitute a material breach of this Agreement under California law. During the 50-day period, DSH will evaluate and find alternative placements, in the most clinically appropriate and least restrictive environment for all Felony Mental Health Diversion Clients receiving services from Contractor and Contractor shall be responsible for all affected clients' transportation to new locations(s) and cease all new admissions upon receipt of notice.

- Z. DSH may terminate the Agreement pursuant to section 7 of Exhibit C if the 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.
- AA. If services are provided on DSH grounds, then the Contractor shall participate in any of the DSH workplace violence prevention, infection control-illness prevention, and workplace safety measures or programs as may be required by DSH. This responsibility includes compliance with infection control measures, use of Personal Protective Equipment (PPE) as prescribed by DSH, attending any and all related training or orientation to such measures or programs as may be required and scheduled by DSH. DSH will provide Contractor with electronic versions of DSH's current Illness and Injury Prevention Plan (IIPP), Workplace Violence Prevention Plan (WVPP), DSH Code of Safe Practices, and other appropriate documents to support worksite safety and infection control.
- BB. On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. By submitting a bid or proposal, Contractor represents that it is not a target of Economic Sanctions. Should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for rejection of the Contractor's bid/proposal any time prior to contract execution, or, if determined after contract execution, shall be grounds for termination by the State.

7. DSH RESPONSIBILITIES:

- A. DSH shall distribute funds to Contractor in accordance with the schedule outlined in Exhibit B, Section 5. Budget Detail, with approved submission of deliverables, such as data required in Exhibit A-1.
- B. DSH shall provide a data collection process to Contractor (see Exhibit A. Contractor Responsibilities). Additional elements may be added by DSH in accordance with WIC section 4361.
- C. Upon receipt of the statutory data requirements (Exhibit A-1) from Contractor, DSH will analyze data for the purpose of program evaluation, monitoring, reporting, and research.
- D. Rights of DSH to Perform Quality Assurance and Financial Audits/Reviews
 - 1) DSH may routinely evaluate the work performance of Contractor, Contractor's personnel, subcontractors, or other parties associated with Contractor to determine if 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 DSH.

- 2) 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 Contract Manager. DSH retains sole and absolute discretion in determining any such evaluation schedule.
- 3) Inspections may be conducted by DSH staff at any time during the Agreement term to check on the quality of work. Payment shall not be provided for services deemed unacceptable by the Contract Manager and/or their designee.
- 4) DSH may audit and examine Contractor's records and accounts which pertain, directly or indirectly, to services performed under this Agreement. DSH may hire third parties to perform the audit and examination, including but not limited to, accountants, consultants, or service providers in the applicable field. Contractor shall cooperate fully with the audits and examinations.
- 5) If as a result of an audit and examination, DSH is informed of underpayments or overpayments, 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 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.
- 6) 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 the Contractor to timely correct deficiencies shall be reason for termination of services under this Agreement.

8. PERFORMANCE MEASURES:

Complete and Timely Provision of Services

- A. Expectations: Contractor is expected to provide all services, including any and all required reports, in a timely manner in accordance with timelines established in Exhibit A, Scope of Work.
- B. DSH reserves the right to check Contractor's records to verify that adequate Client petitions and evaluations have been made to the court to meet the contracted patient admissions per year. If the contractor does not meet this requirement, DSH reserves to right to modify the contracted number of admissions per year and annual budget.
- C. Penalties: Should Contractor not provide all services, including any and all required reports in a timely manner, DSH may choose to terminate this Agreement. Additionally, DSH may find the contractor to be not responsible in provision of services and evaluate this in future contracting opportunities.

9. AMENDMENTS:

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

Revision 12-9-2021

EXHIBIT A-1
DELIVERABLES**1. DATA DELIVERABLES**

- A. **Weekly Diversion Data Submission:** DSH shall provide a list of required variables/data dictionary and collection process to the Contractor. Contractor shall complete and submit the required data to DSH, on a weekly basis with a deadline to be determined by DSH. This data shall be used to reconcile DSH's pending placement list and for billing verification. DSH will provide contractor sixty (60) days advanced notice to implement any change in weekly reporting.
- B. **Monthly Diversion Data Submission:** DSH shall provide a list of required variables/data dictionary and collection process to the Contractor. Contractor shall complete and submit the required data to DSH thirty (30) days after the end of each month. Contractor shall identify any data in the dataset subject to the rules of 42 CFR Part 2 upon submission to DSH. DSH has the right to amend data dictionary at any time and will provide contractor sixty (60) days advanced notice to implement any such change. Data shall be used by DSH for the purposes of program evaluation, monitoring, reporting, and research.

2. REPORTS**A. AWOL REPORT**

Contractor shall report any absence without leave (AWOL) within 24 hours to the court that made the commitment and the DSH Contract Manager or designee.

B. SERIOUS INCIDENT REPORT

Contractor shall report via email to the DSH Contract Manager and assigned DSH Consulting Psychologist when a Felony Mental Health Diversion Client who is currently receiving treatment in the community-based diversion or competency restoration 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. Contractor shall notify DSH verbally or via email within 24 hours of the incident and shall submit a Special Incident Report via email within 48 hours of the incident. Contractor shall respond to Serious Incidents and law enforcement issues of which it becomes aware, with coverage 24 hours per day, seven days a week, and with the capacity to arrange for or provide emergency transportation of Felony Mental Health Diversion Clients. Contractor shall maintain a Serious Incident file that is separate from the Felony Mental Health Diversion Client's record.

C. REVOCATION REPORT

Contractor shall report in writing via email to courtreferrals@dsh.ca.gov and the DSH Contract Manager or designee within two (2) business days of revocation.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

1. INVOICING AND PAYMENT:

- A. Contractor shall submit all invoices not more frequently than monthly in arrears.
- B. For services satisfactorily rendered, and upon receipt and approval of invoices submitted as described herein, DSH agrees to compensate Contractor in accordance with the rates specified in section 5, Budget Detail.
- C. DSH is not responsible for services performed by Contractor outside of this agreement, nor for services performed other than as outlined in Exhibit A, Scope of Work.
- D. 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 DSH for payment, all invoice(s) shall be submitted to DSH for review and approval at either:

Department of State Hospitals
Attention: Accounting Office
1215 O Street, MS-2
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. 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 section 5, Budget Detail, all services or deliverables provided on each invoice.

F. Contractor shall include the following on each submitted invoice:

- 1) Date(s) during which the services or deliverables were provided and the date in which the invoice was generated.
- 2) Agreement number, which can be found on the Standard Agreement Form (Std. 213).
- 3) Small Business certification number, if applicable
- 4) Professional license number, if applicable
- 5) Invoice total
- 6) Written proof of DSH's approval as required by this Agreement for those services requiring pre-approval.
- 7) Back-up documentation, as requested by DSH

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 (FY) 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 FYs, should funds not be appropriated by Congress or approved by the Legislature for the FY in which the Agreement was entered into, and/or any subsequent years covered under this Agreement, 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 amount of this Agreement shall not exceed \$24,874,000 at rates listed in this Agreement. The dollar amounts in the tables below can be realigned among the line items per fiscal year as the counties see fit, including realigning money in the first year for implementation costs. Realignment of funding among the line items must be approved by DSH but will not require a contract amendment.

B. Contractor will be reimbursed for actual expenses in the categories listed in Exhibit A, Section 6, Contractor Responsibilities.

County of San Bernardino 25 Bed Contract Diversion							
Item	Title	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	FY 2028-29	Total
A	Implementation Funding						\$0
B	Wrap Around Service Budget	\$2,081,000	\$3,121,000	\$3,121,000	\$3,121,000	\$3,121,000	\$14,565,000
C	County Administrative Overhead	\$312,000	\$468,000	\$468,000	\$468,000	\$468,000	\$2,184,000
D	Justice Partner Funding	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$5,000,000
E	Violence Risk Assessment	\$325,000	\$325,000	\$325,000	\$325,000	\$325,000	\$1,625,000
F	Court Liaison	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$1,500,000
TOTAL		\$4,018,000	\$5,214,000	\$5,214,000	\$5,214,000	\$5,214,000	\$24,874,000

C. Program Implementation Costs:

Contractor may submit invoices for any and all initial program implementation costs associated with and pertaining to the items in Exhibit A, Scope of Work, Section 6.A, "Program Implementation Funds" within 52 months from the contract start date. The total program implementation costs invoice shall not exceed amount shown in Budget Detail, 5.B., table above.

D. Daily Bed Rate for Wrap Around Services:

DSH shall reimburse Contractor for each filled bed day at a rate of \$228 per bed per day of enrollment per Client. Contractor shall clearly identify the budgeted allocation total for each service category and provide DSH with an itemized invoice of costs for reimbursement.

E. Administrative Overhead Costs:

Contractor's invoices for actual administrative overhead costs shall not exceed the amount shown in Budget Detail, 5.B., table above. Contractor shall clearly identify the budgeted allocation total for each service category and provide DSH with an itemized invoice of costs for reimbursement.

F. Justice Partner, Violence Risk Assessment, and Court Liaison Costs:

Contractor's invoices for actual justice partner, violence risk assessment and court liaison costs shall not exceed the amount shown in Budget Detail, 5.B., table above. Contractor shall clearly identify the budgeted allocation total for each service category and provide DSH with an itemized invoice of costs for reimbursement.

- G. DSH does not expressly or by implication agree that the actual amount of work will correspond with any estimation provided in this Agreement and reserves the right to omit portions of the estimated amount of work as may be deemed necessary or advisable by DSH. The estimates listed above are a good faith estimate and are not a guarantee of business and is subject to change depending on fluctuation in patient population. The amounts indicated above/below will be used solely for the purposes of encumbering funds. DSH makes no guarantee, expressed or implied for actual amount of work to be performed. However, the rates contained in Exhibit B shall be binding for the term of this Agreement.

Should DSH determine, in its sole discretion, that the estimated amount of work is insufficient to meet the demands of patient care or otherwise meet the needs of DSH, the parties may amend this Agreement by adding additional funds 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.

- H. At the sole discretion of DSH and for the purposes of accounting, 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.
- I. Contractor must submit all invoices within a reasonable time but, no later than twelve (12) months from the date that services were provided. If Contractor fails to provide invoices within twelve (12) months of the date services are rendered, 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.

Revision 12-9-2021

EXHIBIT C
GENERAL TERMS AND CONDITIONS

1. APPROVAL:

- A. 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:

- A. 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:

- A. This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. AUDIT:

- A. 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:

- A. Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.

6. DISPUTES:

- A. Contractor shall continue with the responsibilities under this Agreement during any dispute.

7. TERMINATION FOR CAUSE:

- A. The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR:

- A. Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION:

- A. The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

B. 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.)

- C. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

10. CERTIFICATION CLAUSES:

- A. The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

11. TIMELINESS:

- A. Time is of the essence in this Agreement.

12. COMPENSATION:

- A. 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.

13. GOVERNING LAW:

- A. This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

14. ANTITRUST CLAIMS:

- A. The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.
- B. 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.

- C. 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.
- D. 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.
- E. 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.

15. CHILD SUPPORT COMPLIANCE ACT:

- A. For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:
 - 1) 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
 - 2) 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.

16. UNENFORCEABLE PROVISION:

- A. 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.

17. PRIORITY HIRING CONSIDERATIONS:

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

18. 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.)

19. LOSS LEADER:

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

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

1. SUBCONTRACTS:

- A. Except for subcontracts identified in accordance with the solicitation, Contractor shall submit any subcontracts in connection with this Agreement to 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 the Contractor of its responsibilities and obligations hereunder. The 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 the 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.

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

7. PROVISIONS RELATING TO DATA:

- A. "Data" as used in this Agreement means recorded information, regardless of form or characteristics, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or be used to define a design or process; or support a premise or conclusion asserted in any deliverable document called for by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, charts, tables, mathematical modes, collections or extrapolations of data or information, etc. It may be in machine form, as punched cards, magnetic tape, computer printouts, or may be retained in computer memory.
- B. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by the 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.

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 the Contractor, may terminate this Agreement with cause if it is found that gratuities were offered or given by the Contractor or any agent or representative of the 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 the 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 the 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. The 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.

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

18. DISPUTES:

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

19. EVALUATION OF CONTRACTOR'S PERFORMANCE:

- A. The 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 1067.

20. AUDITS, INSPECTION AND ENFORCEMENT:

- A. Contractor agrees to allow the DSH to inspect its facilities and systems, and make available for review its books and records to enable the DSH to monitor compliance with the terms of this Agreement and audit invoices submitted to the DSH.
- B. Contractor shall promptly remedy any violation of any provision of this Agreement to the satisfaction of the DSH.
- C. The fact that the 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. The DSH's failure to detect or the 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 the 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 citizens, as long as state funds are not used; nor does this provision limit Contractor from merely reporting the results of a poll or survey of its membership.

22. CANCELLATION PROVISIONS:

- A. Unless otherwise specified, this Agreement may be canceled at any time by the 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. The DSH shall not be responsible for unamortized costs, overhead or capital costs or any other related costs, including but, not limited to costs incurred in connection with the cancellation of leases or contracts pertaining to facilities, equipment or supplies, labor and employee benefits costs, and expenditures incurred after the date of notice of cancellation.
- B. If the DSH determines that the Contractor has breached a material term of the Agreement and has not cured the breach or ended the violation within the time specified by the DSH, the DSH may terminate the contract by providing notice to the Contractor. The 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 the 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 the 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 the DSH at Contractor's expense. The 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. The 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. The DSH further reserves the right to terminate this Agreement should a threat to security be determined.
- B. In the event that the services required under this Agreement will be performed within a DSH facility, Contractors and their employees who are assigned to work with, near, or around patients shall be required to be examined and tested or medically evaluated by a licensed healthcare provider for TB in an infectious or contagious stage prior to the performance of contracted duties, and at least once a year thereafter (within 12 months of their initial or previous TB test under this contract), or more often as directed by DSH. Contractors and their employees who have any contact (physical or nonphysical) with patients, shall be required to furnish to the DSH Contract Manager, at no cost to DSH, a documented Tuberculosis (TB) evaluation/test for TB infection (Tuberculin Skin Test (TST) or a blood test Interferon Gamma Release Assay (IGRA) completed within (30) thirty days of the start date of the services and be certified to be free of TB in an infectious or contagious stage by a licensed healthcare provider prior to assuming their contracted duties and annually thereafter.
- C. If both of the documented results of the TST provided $\leq 0-9$ /mm of induration, then the tested person may be cleared to provide services. However, if the documented result of the TST is ≥ 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. The 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 the 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 the DSH. Contractor shall disclose, in writing, as well as on a continuous basis, to the 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.

28. GENERATIVE ARTIFICIAL INTELLIGENCE (GenAI):

- A. During the term of the contract, Contractor must notify the State in writing if their services or any work under this contract includes, or makes available, any previously unreported GenAI technology, including GenAI from third parties or subcontractors. Contractor shall immediately complete the GenAI Reporting and Factsheet (STD 1000) to notify the State of any new or previously unreported GenAI technology.
- B. At the direction of the State, Contractor shall discontinue the use of any new or previously undisclosed GenAI technology that materially impacts functionality, risk or contract performance, until use of such GenAI technology has been approved by the State.
- C. Failure to disclose GenAI use to the State and submit the GenAI Reporting and Factsheet (STD 1000) may be considered a breach of the contract by the State at its sole discretion and the State may consider such failure to disclose GenAI and/or failure to submit the GenAI Reporting and Factsheet (STD 1000) as grounds for immediate termination of the contract. The State is entitled to seek any and all relief to which it may be entitled to as a result of such nondisclosure.
- D. The State reserves the right to amend the contract, without additional cost, to incorporate GenAI Special Provisions into the contract at its sole discretion and/or terminate any contract that presents an unacceptable level of risk to the State.

Revision 8/13/2024

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

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

1. CONFIDENTIALITY AND INFORMATION SECURITY PROVISIONS:

- A. Contractor shall comply with applicable laws and regulations, including but not limited to Welfare and Institutions Code sections 14100.2 and 5328 et seq. (2021), the Lanterman-Petris-Short Act, Civil Code section 1798 et seq. (2021), the Information Practices Act of 1977, Health and Safety Code section 123100 et seq. (2021), the Patient Access to Health Records Act, Title 42, Code of Federal Regulations (C.F.R.) part 431.300 et seq. (2021), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including but not limited to section 1320d et seq. of Title 42 of the United States Code and its implementing regulations (including but not limited to Title 45, Code of Federal Regulations (C.F.R.), parts 160, 162 and 164 (2021) (HIPAA regulations)), as well as 42 CFR Part 2 when applicable, regarding the confidentiality and security of protected health information (PHI). The following provisions of this Exhibit set forth some of the requirements of these statutes and regulations. This Exhibit should not be considered an exclusive list of the requirements. Contractor is required to fulfill the requirements of these statutes and regulations by independently researching and obtaining legal advice on these requirements as they may be amended from time to time.
- B. Order of Precedence: With respect to confidentiality and information security provisions for all DSH confidential information, the terms and conditions of this Exhibit shall take precedence over any conflicting terms or conditions set forth in any other part of the agreement between Contractor and DSH, including Exhibit A (Scope of Work), all other exhibits and any other attachments, and shall prevail over any such conflicting terms or conditions.
- C. Effect on lower tier transactions: The terms of this Exhibit shall apply to all contracts, subcontracts, and subawards, and the information privacy and security requirements Contractor is obligated to follow with respect to DSH confidential information disclosed to Contractor, or collected, created, maintained, stored, transmitted or used by Contractor for or on behalf of DSH, pursuant to Contractor's agreement with DSH. When applicable, the Contractor shall incorporate the relevant provisions of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.

2. DEFINITIONS:

- A. The following terms used in the agreement between DSH and Contractor shall have the same meaning as those terms in the HIPAA Rules: Breach, Covered Entity, Data Aggregation, Disclosure, Health Care Operations, Individual, Minimum Necessary, Protected Health Information, Secretary, Subcontractor, Unsecured Protected Health Information, and Use.
- B. Specific Definitions
- 1) Contractor. Contractor shall have the same meaning as the term “business associate” at 45 C.F.R. section 160.103 (2021).
 - 2) Breach. With respect to Contractor’s handling of confidential information, “breach” shall have the same meaning as the term “breach” in HIPAA, 45 C.F.R. section 164.402 (2021).
 - 3) HIPAA Rules. HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. parts 160 and 164 (2021).
 - 4) Confidential Information. Confidential information shall mean information or data that is Protected Health Information or Personal Information as defined herein.
 - 5) Personal Information (PI). Personal Information shall have the same meaning as defined in Civil Code section 1798.3, subdivision (a) (2021).
 - 6) Required by law, as set forth under 45 C.F.R. section 164.103 (2021), shall mean a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
 - 7) Security Incident. Security Incident shall mean the intentional attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, or confidential data that is essential to the ongoing operation of Contractor’s organization and intended for internal use; or interference with system operations in an information system.

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE:**A. Contractor agrees to:**

- 1) 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;
- 2) use appropriate safeguards, and comply with Subpart C of 45 C.F.R. part 164 (2021) with respect to electronic confidential information, to prevent use or disclosure of confidential information other than as provided for by the agreement with DSH;
- 3) report to DSH any use or disclosure of confidential information not provided for by the agreement with DSH of which it becomes aware, including breaches of unsecured protected health information as required at 45 C.F.R. section 164.410 (2021), and any security incident of which it becomes aware;
- 4) in accordance with 45 C.F.R. sections 164.502(e)(1)(ii) and 164.308(b)(2) (2021), if applicable, ensure that any agents and subcontractors that create, receive, maintain, or transmit confidential information on behalf of Contractor enter into a written agreement with Contractor agreeing to be bound to the same restrictions, conditions, and requirements that apply to Contractor with respect to such information;
- 5) to provide access and make available confidential information in a designated record set to DSH or to an Individual in accordance with 45 C.F.R. section 164.524 (2021) and California Health and Safety Code section 123100 et seq. (2021). Designated Record Set shall mean the group of records maintained for DSH that includes medical, dental, and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DSH health plans; or those records used to make decisions about individuals on behalf of DSH. Contractor shall use the forms and processes developed by DSH for this purpose and shall respond to requests for access to records transmitted by DSH within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none;
- 6) if Contractor maintains an Electronic Health Record with PHI and an Individual requests a copy of such information in an electronic format, Contractor shall provide such information in an electronic format to enable DSH to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e) (2021);
- 7) if Contractor receives data from DSH that was provided to DSH by the Social Security Administration, upon request by DSH, Contractor shall provide DSH with a list of all employees, subcontractors, and agents who have access to the Social Security data, including employees, contractors, and agents of its subcontractors and agents;

- 8) make any amendment(s) to confidential information in a Designated Record Set as directed or agreed to by DSH pursuant to 45 C.F.R. section 164.526 (2021), or take other measures as necessary to satisfy DSH's obligations under 45 C.F.R. section 164.526 (2021);
- 9) to document and make available to DSH or (at the direction of DSH) to an Individual within 15 days such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the Individual for an accounting of disclosures of PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 C.F.R. section 164.528 (2021) and 42 U.S.C. section 17935(c) (2021). If Contractor maintains electronic health records for DSH as of January 1, 2009, Contractor must provide an accounting of disclosures, including those disclosures for treatment, payment, or health care operations, effective with disclosures on or after January 1, 2014. If Contractor acquires electronic health records for DSH after January 1, 2009, Contractor must provide an accounting of disclosures, including those disclosures for treatment, payment, or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting;
- 10) to the extent Contractor is to carry out one or more of DSH's obligation(s) under Subpart E of 45 C.F.R. part 164 (2021), comply with the requirements of Subpart E that apply to DSH in the performance of such obligation(s); and
- 11) make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA regulations.
- 12) comply with all legal obligations pursuant to the California Consumer Privacy Protection Act (CCPA) of Contractor, its employees, agents and sub-contractors, including but not limited to the handling and disclosure of personal information received resulting from this agreement, abiding by CCPA notice requirements on Contractor's website(s), safeguarding personal information received in connection with this agreement, refraining from using personal information received in connection with this agreement outside of the enumerated business purpose contained therein. Contractor's failure to comply with such laws and regulations shall constitute a material breach of this Agreement, and shall be grounds for immediate termination of the Agreement by DSH, pursuant to section 7 of Exhibit C. By executing this Agreement, Contractor certifies that it is aware of its legal obligations as set forth under the CCPA, that it is in compliance with the CCPA, and shall remain in compliance with all such laws and regulations for the term of this Agreement.

- 13) indemnify and hold the DSH harmless from and against any and all liability, loss, suit, damage or claim, including third party claims brought against the DSH, pursuant to section 5 of Exhibit C of this Agreement, as well as damages and reasonable costs assessed against the DSH by a court of competent jurisdiction (or, at Contractor's option, that are included in a settlement of such claim or action in accordance herewith), to the fullest extent permitted by State law, to the extent such claim arises from Contractor's violation of the CCPA in relation to Contractor's performance under this agreement; provided, that (i) Contractor is notified promptly in writing of the claim; (ii) Contractor controls the defense and settlement of the claim; (iii) Contractor provides a defense with counsel approved by the DSH; and (iv) the DSH cooperates with all reasonable requests of Contractor (at Contractor's expense) in defending or settling the claim.

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

- A. Except as otherwise provided in the agreement between Contractor and DSH, Contractor, may use or disclose DSH confidential information to perform functions, activities or services identified in the agreement with DSH provided that such use or disclosure would not violate federal or state laws or regulations.
- B. Contractor may not use or disclose the confidential information except as provided and permitted or required by this agreement with DSH or as required by law.
- C. Contractor may use and disclose confidential information for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided that such uses and disclosures are required by law.
- D. Contractor may use confidential information to provide data aggregation services related to the health care operations of the DSH. Data aggregation means the combining of DSH confidential information created or received by Contractor on behalf of DSH with confidential information received by Contractor in its capacity as the business associate of another Covered Entity, to permit data analyses that relate to the health care operations of DSH.

5. SAFEGUARDS:

- A. Contractor shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical, and physical safeguards. The information privacy and security program shall reasonably and appropriately protect the confidentiality, integrity, and availability of the confidential information that it creates, receives, maintains, or transmits; and prevent the use or disclosure of confidential information other than as provided for by the agreement with DSH. Contractor shall provide the DSH with information concerning such safeguards as the DSH may reasonably request from time to time.

- B. Contractor shall implement administrative, technical, and physical safeguards to ensure the security of the DSH information on portable electronic media (e.g., USB drives and CD-ROM) and in paper files. Administrative safeguards to be implemented shall include, but are not limited to training, instructions to employees, and policies and procedures regarding the HIPAA Privacy Rule. Technical safeguards to be implemented must comply with the HIPAA Security Rule and Subpart C of part 164 of the HIPAA regulations with respect to electronic confidential information, and shall include, but are not limited to, role-based access, computer passwords, timing out of screens, storing laptop computers in a secure location (never leaving the equipment unattended at workplace, home or in a vehicle) and encryption. Physical safeguards to be implemented shall include, but are not limited to, locks on file cabinets, door locks, partitions, shredders, and confidential destruct.

6. AUTHENTICATION:

- A. Contractor shall implement appropriate authentication methods to ensure information system access to confidential information is only granted to properly authenticated and authorized persons. If passwords are used in user authentication (e.g., username/password combination), Contractor shall implement strong password controls on all compatible computing systems that are consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-53 and the SANS Institute Password Protection Policy.
- 1) 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:
 - a. network-based firewall and/or personal firewall,
 - b. continuously updated anti-virus software and
 - c. patch-management process including installation of all operating system/software vendor security patches.
 - 2) 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.
 - 3) 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.
 - 4) Contractor shall not transmit confidential, personal, or sensitive data via e-mail or other Internet transport protocol over a public network unless, at minimum, a 128-bit encryption method (for example AES, 3DES, or RC4) is used to secure the data.

7. MITIGATION OF HARMFUL EFFECTS:

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

8. NOTIFICATION OF BREACH:

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

9. DISCOVERY OF BREACH:

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

10. INVESTIGATION OF BREACH:

- A. Contractor shall immediately investigate such security incident, breach, or unauthorized use or disclosure of DSH confidential information. Within 8 hours of discovery (of the breach), Contractor shall notify the DSH Chief Information Security Officer of at least the following:
- 1) the data elements involved and the extent of the confidential data involved in the breach;
 - 2) a description of the unauthorized person(s) known or reasonably believed to have improperly acquired, accessed, used, transmitted, sent or disclosed confidential information;
 - 3) a description of where and when the confidential information is believed to have been improperly acquired, accessed, used, transmitted, sent or disclosed;

- 4) a description of the probable causes of the improper acquisition, access, use, transmission, sending, or disclosure; and
- 5) whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are required.

11. WRITTEN REPORT:

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

12. NOTIFICATION OF INDIVIDUALS:

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

13. DSH CONTACT INFORMATION:

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

DSH Contract Manager	DSH Chief Privacy Officer	DSH Chief Information Security Officer
See Exhibit A - Scope of Work for contact information	Chief Privacy Officer Office of Legal Services 1215 O Street, MS-5 Sacramento, CA 95814 Email: Privacy.Officer@dsh.ca.gov Telephone: 916-562-3721	Chief Information Security Officer Information Security Office 1215 O Street, MS-4 Sacramento, CA 95814 Email: iso@dsh.ca.gov and security@dsh.ca.gov 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 the agreement between DSH and Contractor by employees who assist in the performance of functions or activities under this agreement and use or disclose confidential information; and discipline such employees who intentionally violate any provisions of this agreement.

16. EFFECT OF TERMINATION:

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

17. MISCELLANEOUS PROVISIONS:

- A. DSH shall notify Contractor and Contractor shall notify DSH of restrictions on disclosures or the manner of confidential communications requested and agreed to by Contractor or DSH from an Individual to satisfy 45 C.F.R. section 164.522 (2021).
- B. Assistance in Litigation or Administrative Proceedings. Contractor shall make itself, and use its best efforts to make any subcontractors, employees or agents assisting Contractor in the performance of its obligations under the agreement with DSH, available to DSH at no cost to DSH to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DSH, its directors, officers or employees for claimed violations of HIPAA, regulations or other laws relating to security and privacy based upon actions or inactions of Contractor and/or its subcontractors, employees, or agents, except where Contractor or its subcontractors, employees, or agents is a named adverse party.

- C. No Third-Party Beneficiaries. Nothing expressed or implied in the terms and conditions of the agreement between Contractor and DSH is intended to confer, nor shall anything herein confer, upon any person other than DSH or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- D. The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with the HIPAA regulations and applicable federal and state laws. The parties agree that any ambiguity in the terms and conditions of the agreement between the parties shall be resolved in favor of a meaning that complies and is consistent with state and federal law, including HIPAA and the HIPAA regulations.
- E. A reference in the terms and conditions of the agreement between DSH and Contractor to any HIPAA regulation relates to that section in effect or as amended.
- F. The obligations of Contractor under this Exhibit E shall survive the termination or expiration of the agreement.

18. JUDICIAL OR ADMINISTRATIVE PROCEEDINGS:

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

19. TERMINATION FOR CAUSE:

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

Revision 9/2/2021