

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER 24-30079-000	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 - Patton

CONTRACTOR NAME

San Bernardino County Department of Public Health

2. The term of this Agreement is:

START DATE

July 1, 2024

THROUGH END DATE

June 30, 2027

3. The maximum amount of this Agreement is:

\$50,000.00,

Fifty 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	8
Exhibit B	Budget Detail and Payment Provisions	5
Exhibit C *	General Terms and Conditions (GTC 4/2017)	0
+ -	Exhibit D Special Terms and Conditions	8
+ -	Exhibit E Confidentiality and Information Security Provisions (HIPAA Business Associate Agreement)	8

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 Public Health

CONTRACTOR BUSINESS ADDRESS 150 E. Holt Avenue, Ontario, CA 91761	CITY Ontario	STATE CA	ZIP 91761
PRINTED NAME OF PERSON SIGNING Dawn Rowe	TITLE Chair, Board of Supervisors		
CONTRACTOR AUTHORIZED SIGNATURE	DATE SIGNED		

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**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

Department of State Hospitals - Patton

CONTRACTING AGENCY ADDRESS

3102 E. Highland Ave.

CITY

Patton

STATE

CA

ZIP

92369

PRINTED NAME OF PERSON SIGNING

Janine Wallace

TITLE

Executive Director

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

SCM Vol. 1, 4.04. A.2

**EXHIBIT A**  
**SCOPE OF WORK**

**1. CONTRACTED PARTIES:**

- A. San Bernardino County Department of Public Health, hereafter referred to as Contractor, agrees to provide public health laboratory services (as defined in Section 6) to the Department of State Hospitals (DSH) – Patton pursuant to the terms and conditions of the Agreement.

**2. SERVICE LOCATIONS:**

- A. The services shall be performed for the Department of State Hospitals at the following location(s):
  - i. San Bernardino County Department of Public Health, 150 E. Holt Avenue, Ontario, CA 91761.
  - ii. San Bernardino County Department of Public Health, 606 E. Mill Street, San Bernardino, CA 92415.

If additional locations are needed, they shall be added upon agreement with Contractor and DSH, without the need for an amendment.

**3. SERVICE HOURS:**

- A. The services shall be provided Monday through Friday, between the hours of 8:30 a.m. and 4:00 p.m., and as scheduled and agreed upon by Contractor and DSH.

**4. PROJECT REPRESENTATIVES:**

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

*Contract Manager:*

Department of State Hospitals - Patton		San Bernardino County Dept. Public Health	
Section/Unit: Medical Services Department		Section/Unit: Contracts and Grants Unit	
Attention: Yusak “Josh” Sopandi Medical Services Administrator		Attention: Contracts and Grants Unit	
Address: 3102 E Highland Avenue Patton, CA 92369		Address: 451 E. Vanderbilt Way, 3rd Floor San Bernardino, CA 92408	
Phone: 909-359-4351	Fax: 909-425-6589	Phone: 909-725-5426	Fax: N/A
Email: <a href="mailto:yusak.sopandi@dsh.ca.gov">yusak.sopandi@dsh.ca.gov</a>		Email: <a href="mailto:fas.dph@dph.sbcounty.gov">fas.dph@dph.sbcounty.gov</a>	

*Administrative Contacts (all administrative inquiries should be directed to):*

Department of State Hospitals - Patton		San Bernardino County Dept. Public Health	
Section/Unit: Acquisitions & Contracts Unit		Section/Unit: Billing Office	
Attention: Andrea Rocha Contract Analyst		Attention: TBD	
Address: 3102 E Highland Avenue Patton, CA 92369		Address: TBD	
Phone: 909-672-1503	Fax: 909-425-7260	Phone: TBD	Fax: TBD
Email: <a href="mailto:andrea.rocha@dsh.ca.gov">andrea.rocha@dsh.ca.gov</a>		Email: TBD	

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. Contractor shall provide public health laboratory services for DSH patients when referred directly by a medical physician.

**6. CONTRACTOR RESPONSIBILITIES:**

- A. Contractor's services shall include, but not be limited to, public health laboratory services related to communicable diseases and other conditions of public health importance, on blood, sputum, urine, and other body fluids.
- B. Physicians providing services under this Agreement shall be licensed by the California Department of Consumer Affairs, Medical Board of California (MBC).
- C. Physicians providing services under this Agreement shall be licensed by the American Board of Pathology.
- D. Contractor shall maintain the following certifications
  - i. A public health and environmental health laboratory Certified by the California Department of Public Health.
  - ii. Medicare certified laboratory with average proficiency at least 95%. A copy of the graded proficiency test results shall be provided as requested during the term of this contract.
  - iii. Additional certifications indicating that services provided meet the requirements in accordance with the California Lab Field Services to CLIA 88 standards.
- E. Contractor will utilize laboratory methods approved by the FDA, if commercially available for the tests requested, unless published studies demonstrate superiority of an alternative method.
- F. Contractor shall only perform tests that are ordered by a DSH physician. Any additional testing provided by the Contractor which was not ordered by a DSH physician shall be at the sole risk and expense of the Contractor.
- G. Contractor shall provide sputum induction for DSH patients at Contractor's public health clinic facility as required by DSH. In this case, Contractor's personnel will arrange for the transportation of the specimen to the laboratory.
- H. While services are being provided at the Contractor's public health clinic facility, Contractor shall assume responsibility for the medical testing and treatment of the DSH patient. In the event a DSH patient is accompanied to the Contractor's public health clinic facility by a DSH level of care (LOC) staff, DSH LOC staff shall not provide any type of services to the DSH patient at any time.
- I. Contractor shall assure that all laboratory results are faxed to DSH Medical Services Department at (909) 425-7151 or mailed to: Department of State Hospitals – Patton, Medical Services Department, 3102 E. Highland Ave., Patton, CA 92369, within twenty-four (24) hours from the time reports are transcribed and signed.

- J. Any follow-up medical care required at DSH that cannot wait for transcribed reports, shall be transmitted immediately after treatment, either by phone to the attending DSH physician, by hand delivery in care of DSH nursing staff or California Department of Corrections and Rehabilitation (CDCR) Corrections Officer accompanying the DSH patient, or via fax to the DSH Central Nursing Office (CNS) at (909) 425-7723. (Please note that the fax number for urgent reports is different than the fax number for dictated reports.)
- K. Contractor shall provide, upon request, microbiological services at least five (5) days per week, (excluding county-observed holidays) with at least staining, microscopy, and plating of normally sterile body fluids.
- L. Contractor shall supply nasopharyngeal swabs for viral respiratory testing.
- M. Laboratory reports are required to meet the following specifications:
  - i. Must be typewritten (e.g. by computer printer).
  - ii. Test results shall be faxed to (909) 425-6213 or mailed to: Department of State Hospitals – Patton, Public Health Office, 3102 E. Highland Ave., Patton, CA 92369
  - iii. Results outside established reference range to be marked or separated from normal results for easy identification.
  - iv. Normal therapeutic ranges must be printed on front of report form, as applicable.
  - v. Results of tests from separate individuals must be on separate report forms.
  - vi. All test results shall be on 8.5 by 11-inch paper. Results shall be separated by patient name.
  - vii. HIV antibody and viral load or antigen results must be on separate sheets from other test results for legal reasons.
  - viii. If sufficient sample exists, specimens shall be retained for at least ten (10) days after the results are reported, to allow for repeat or additional testing. Abnormal results will be reported to DSH clinical laboratory on the day the results are obtained.
  - ix. Test results, which will be delayed more than twenty-four (24) hours due to the use of a subcontracting laboratory, shall be reported back to DSH on the same day they are reported by the subcontracting laboratory.
  - x. Critical values, i.e., abnormal results with the potential for life-threatening or other severe medical implications ("panic values"), shall be phoned back to DSH Collection Station immediately after results are obtained. Critical lab values obtained after 4:30 will be called to the Unit Registered Nurse or the Shift Lead. A read back of the results must be obtained, followed by a faxed copy to the Unit (refer to the following list of Unit fax numbers) and the Assistant Coordinator of Nursing Services (ACNS) or the Medical Officer of the Day (MOD) at (909) 425-7723. The list of critical values shall be approved by DSH and provided to the Contractor.

**UNIT MED ROOM FAX NUMBERS (909) 425-XXXX**

UNIT	FAX	UNIT	FAX	UNIT	FAX	UNIT	FAX
EB01	6656	70	7053	N20	7093	30	6330
EB02	6067	71	7307	N21	6430	31	6331
EB04	6320	72	6085	N22	6431	32	6332
EB09	7485	73	6087	N23	6431	33	6333
EB10	6497	74	7348	N24	7092	34	6334
EB11	7904	75	7372	N25	6429	35	6335
EB12	6066	76	6086	N26	6282	36	6336
U05	6321	77	6088	N27	6432	36	6337
U06	6322						

- xi. Contractor shall not substitute testing technique or materials, such as culture media, without prior notification of DSH and valid justification.
  - xii. Contractor shall have the capacity to perform biochemical studies, microbiology, and immunology studies, and any other test requested within the contractor's own laboratory facilities.
  - xiii. Contractor shall refer out esoteric or unusual tests or those requiring special, unusual equipment. Contractor shall provide evidence of all subcontractors' readiness to provide services.
  - xiv. Contractor shall submit the list of all tests routinely performed in its laboratory and the list of most frequently used reference laboratories for esoteric tests. All laboratories to be used, for referral of DSH specimens, shall be approved in advance by the State or by DSH. Upon request, Contractor shall provide data on methods of quality control, inter-assay or intra-assay variations and detailed test protocols for testing.
  - xv. Contractor shall provide statistical data summaries, upon request, tabulated by type of test and panel, on the volume of individual tests and panels. All tests done as part of a panel shall be grouped by panel rather than grouped with individual tests.
- N. Contractor shall share the list of high and low "panic values," for immediate callback to DSH and shall adjust this list for purposes of notification of the DSH, at the request of the DSH.
- O. Contractor may direct any questions or problems about medical referrals to the DSH Chief Physician/Surgeon or designee. Both parties shall investigate and respond as appropriate to such communications.
- P. In the event of disagreements or complaints by either party regarding compliance with this agreement, or quality of service that cannot be promptly resolved, Contractor and the DSH agree to meet and confer within two weeks.
- Q. Contractor shall provide a representative to meet with the DSH Infection Control Committee, upon request, no more than quarterly (meetings to be scheduled by DSH).
- R. DSH patients receiving medical care outside of DSH shall also be under the jurisdiction of CDCR. CDCR Corrections Officers may use physical restraints or seclusion strictly for security and protection of the patients and staff, and to prevent escape. CDCR Corrections Officers shall not

provide nursing treatment or medical services. CDCR Corrections Officers shall not take a lunch break when assigned to the Contractor's facility.

- S. Restraints used for medical or behavioral purposes shall be the responsibility of CDCR while patients are receiving treatment at the Contractor's facility and shall be used in accordance with all governmental regulations.
- T. Quality Assurance
- i. Contractor shall maintain an active, systematic process, based on objective and measurable criteria, by which to monitor and evaluate the quality and appropriateness of patient health care services. Such monitoring shall also be to provide assurances that those services were medically necessary, delivered in a cost-effective manner, and delivered with the assurance of quality.
  - ii. Contractor shall maintain a mechanism for reporting the results for these activities to the DSH. Contractor shall, as requested, provide the DSH with patient data needed for the purposes of updating, enhancing, or modifying the DSH Medical Standards of Care health care policy. Patient data shall include patient complications, patient mortality, patient stability at time of discharge/transfer, post-discharge complication rate, post discharge mortality rate, and re-admission rate. Additional data must be provided to the DSH, upon request.
- U. Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement shall not engage in, and shall report all instances of, any activity that would constitute "Workplace Violence" as defined in the applicable DSH Administrative Letter, which can be provided upon request. Failure to comply with this provision by Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement shall be deemed a material breach of this Agreement.
- V. If services are provided on DSH grounds, Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement must present a valid picture identification (e.g., driver license or identification card issued by a state Department of Motor Vehicle, military card, etc.; company badges are not valid) in order to be admitted into secured areas.
- W. If services are provided on DSH grounds, each person performing services under this Agreement may be issued a Personal Duress Alarm System (PDAS) tag and charger. These devices are issued for the safety and security of all contractors. It will be the responsibility of each person to ensure they wear the device during each visit and to maintain the battery by charging it when necessary. Each person performing services under this Agreement may be required, at the discretion of DSH, to be oriented to the use of PDAS, including but not limited to videos, classroom time, etc.
- i. Upon the expiration or termination of this Agreement, Contractor shall ensure that each person performing services under this Agreement return all of their PDA tags and chargers to the appropriate DSH Police Department. If a PDA tag and charger is not returned to DSH, Contractor will be responsible for the current replacement cost of the PDA tag (at the rates of \$66.22 per tag, and \$14.62 per charger). Contractor will be billed accordingly for any PDA tags and chargers that are not returned. Failure to reimburse cost by Contractor will result in DSH withholding the cost of unreturned PDA tags and/or chargers against any outstanding invoices. If all invoices have been paid, DSH will issue an invoice to Contractor for payment. The DSH Contract Manager shall ensure all PDA tags and

chargers are returned to the appropriate DSH Police Department prior to signing off final invoice for payment.

- X. If services are provided on DSH grounds, Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement shall not take pictures or video with a camera or phone anywhere on DSH grounds without the written consent of the Executive Director or designee. If any Contractor is caught taking photos or video without prior authorization, their phone or camera will be subject to search and further action will be taken by DSH Hospital police.
- Y. If services are provided on DSH grounds, Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement shall not engage in conversation with DSH patients unless providing direct services to DSH patients conforming to the terms and conditions of their contract.
- Z. If services are provided on DSH grounds, then Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement shall adhere to the dress code of the location where work is being performed. These dress codes may include limitations on the length, color, and material of clothing, or anything else required by that location. Contractor and subcontractors shall obtain a current copy of each location's dress code prior to the performance of any work. Contractor and subcontractors may be refused entry into the DSH grounds if their clothing is found to violate the established dress codes. The DSH retains the right to change its dress codes at any time.
- AA. If services are provided on DSH grounds, Contractor understands and agrees that the DSH reserves the right to limit or restrict the equipment, including but not limited to, tools and communication devices that the Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement may bring on grounds. In no way shall the DSH be held liable or accountable for tools misplaced or left behind. Upon notice by the DSH, Contractor shall comply with all such limitations and restrictions.
- BB. If services are provided on DSH grounds, Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement shall not possess or use any tobacco products, (including smokeless tobacco) on the DSH grounds (Welfare and Institutions Code section 4138).
- CC. If services are provided on DSH grounds, then Contractor shall participate in any of the DSH safety measures or programs as may be required by the DSH. This responsibility includes attending any and all related training or orientation to such measures or programs as may be required and scheduled by the DSH.
- DD. Contractor and its subcontractors shall procure and keep in full force and effect during the term of this Agreement all permits, registrations and licenses necessary to accomplish the work specified in this Agreement, and shall give all notices necessary and incident to the lawful prosecution of the work. Contractor shall provide proof of any such license(s) permits(s), and certificate(s) upon request by the DSH. Contractor agrees that failure by itself or its subcontractors to provide evidence of licensing, permits, or certifications shall constitute a material breach for which the DSH may terminate this Agreement with cause.
- EE. Contractor shall provide services as outlined in this Agreement. Contractor shall be responsible to fulfill the requirements of the Agreement and shall incur expenses at its own risk and invest sufficient amount of time and capital to fulfill the obligations as contained herein.

- FF. 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, and 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 the Contractor shall immediately notify the state in writing.
- GG. The 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.

## **7. THE DSH RESPONSIBILITIES:**

- A. DSH shall obtain and transport specimens to the Contractor's facility, except when patients are sent directly to the Contractor's facility for sputum induction.
- B. DSH shall provide the supplies necessary for collection and transportation of specimens to the Contractor's laboratory.
- C. DSH will provide pertinent clinical information to the Contractor for patients referred for services. Information considered pertinent includes: principal psychiatric diagnosis, current medications, diet, current risk for aggressive or self-abusive behavior and existing medical condition, including alerts for contagious diseases. In emergency situations, where information is not prepared, the information will be provided to the Contractor as soon as possible.
- D. DSH shall facilitate escort by the CDCR for patients receiving medical care outside of DSH. CDCR officers shall use physical restraints or seclusion strictly for security and protection of the patients and staff, and to prevent escape. The use of any physical restraints or seclusion shall comply with California Code of Regulations (CCR), Title 15, Section 3268.2.
- E. Rights of the DSH to Perform Quality Assurance and Financial Audits/Reviews
- i. The DSH may routinely evaluate the work performance of the Contractor, Contractor's personnel, subcontractors, or other parties associated with the Contractor to determine if the DSH standards and departmental policies and procedures are being maintained. If it is found that any party fails to perform or is physically or mentally incapable of providing services as required by the Agreement, then that party shall not perform services for the DSH.
  - ii. The DSH may monitor and evaluate services provided in fulfillment of the requirements of this Agreement, as detailed in Exhibit A. Such monitoring and evaluation may occur on a regular cycle or as deemed necessary by the Contracts Manager. The DSH retains sole and absolute discretion in determining any such evaluation schedule.
  - iii. Inspections may be conducted by the 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.
  - iv. The DSH reserves the right, at its expense, to make periodic Quality of Care audits and reviews for health care services rendered to patients. The purpose of these audits or

reviews is to verify compliance with the provisions of this Agreement, state and federal laws and regulations, and/or the DSH policies and procedures.

- v. The DSH may audit and examine Contractor's records and accounts which pertain, directly or indirectly, to services performed under this Agreement. The DSH may hire third parties to perform the audit and examination, including but not limited to, accountants, consultants, or service providers in the applicable field. Contractor shall cooperate fully with the audits and examinations.
- vi. If as a result of an audit and examination, the DSH is informed of underpayments or overpayments, the DSH shall notify Contractor of the need for payment or reimbursement. Upon receipt of a final audit report, Contractor has 30 days to reimburse any overpayment or to dispute or challenge the report. Contractor and the DSH shall confer and negotiate in good faith with respect to any disputed portion of the final audit report to reach agreement with respect to adjustments, payments, and reimbursements.
- vii. The DSH shall submit its findings to Contractor and establish a deadline for correcting any deficiencies in fulfilling the obligations set forth in this section. Failure by the Contractor to timely correct deficiencies shall be reason for termination of services under this Agreement.
- viii. As a provider of acute psychiatric hospital services, the DSH is responsible for the professional and administrative services provided to the DSH patients. Notwithstanding the foregoing, Contractor shall provide services pursuant to its professional standard of care, the terms and conditions of this Agreement, and the requirements of Title 22 of the California Code of Regulations (the "Standards"), and shall remain liable for any violations of the Standards.

## **8. PERFORMANCE MEASURES:**

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

- i. Expectations: Contractor is expected to provide all services, including any and all required reports, in a timely manner – in accordance with timelines established in Exhibit A, Scope of Work.
- ii. 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, the DSH may find the contractor to be not responsible in provision of services and evaluate this in future contracting opportunities.

## **9. AMENDMENTS:**

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

**EXHIBIT 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, the DSH agrees to compensate Contractor in accordance with the rates specified in section 5, Budget Detail.
- C. The DSH is not responsible for services performed by Contractor outside of this agreement, nor for services performed other than as outlined in Exhibit A, Scope of Work.
- D. The DSH makes no guarantee, either written or implied, as to the actual amount of funds that will be expended under this Agreement.

**2. INSTRUCTIONS TO CONTRACTOR:**

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

Department of State Hospitals – Patton  
Attention: Accounting Office  
3102 E. Highland Avenue  
Patton, CA 92369

- B. Contractor shall submit one original and one copy of each invoice.
- C. Contractor shall type, not handwrite, each invoice on 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:
  - i. Date(s) during which the services or deliverables were provided and the date in which the invoice was generated.
  - ii. Agreement number, which can be found on the Standard Agreement Form (Std. 213).
  - iii. Small Business certification number, if applicable
  - iv. Professional license number, if applicable
  - v. Invoice total

- vi. Contractor's name as it appears on the Std. 213. If Contractor has both a legal and a fictitious name listed on the Std. 213, Contractor may, at its discretion, invoice using the full name as indicated on the Std. 213, or either of the two names listed.
- vii. DSH Patient name.
- viii. DSH Patient date of birth.
- ix. DSH Patient Identification Number.
- x. National Provider Identifier (NPI) number.

**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 FY's, 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. Public health laboratory services shall be compensated in accordance with the San Bernardino County Ordinance 16.0213A(c), which is published annually.
- B. Since the DSH may refer patients having Medicare or a private health insurance plan for medical services, payment shall be made in accordance with the following process:
  - i. For patients covered in whole or part by Medicare:

- (1) Contractor shall submit claims for services rendered to patients having Medicare insurance to Medicare for reimbursement within any required timeframes, prior to invoicing the DSH.
  - (2) Contractor shall resubmit all Medicare claims denied due to errors to Medicare prior to invoicing to the DSH.
  - (3) Contractor shall then submit the Explanation of Medicare Benefits (EOMB), reflecting Medicare payments or denials, with an original invoice when billing the DSH.
  - (4) Contractor, whether a participating provider (PAR) or a non-participating (Non-PAR) provider shall consider payment made by CMS, and payment made by the DSH for the patient's portion (i.e., deductibles, copays, and/or coinsurances) to be payment in full.
- ii. For patients covered in whole or part by a private health insurance plan:
- (1) Contractor shall submit claims for services rendered to patients having a private health insurance plan to the appropriate payor for reimbursement within any required timeframes, prior to invoicing the DSH.
  - (2) Contractor shall then submit the Explanation of Benefits (EOB), reflecting insurance payments or denials, with an original invoice when billing the DSH for any applicable remaining balances, including, but not limited to, patient deductible, patient responsibility, and coinsurance amounts.
- iii. For patients covered in whole or part by both Medicare and a private health insurance plan:
- (1) Contractor shall seek reimbursement from both sources as required by CMS, prior to invoicing the DSH.
  - (2) Contractor shall then submit the EOMB(s)/EOB(s), reflecting Medicare and/or insurance payments or denials, as applicable, with an original invoice when billing the DSH.
  - (3) Contractor, whether a participating provider (PAR) or a non-participating (Non-PAR) provider shall consider payment made by CMS, and payment made by the patient's insurance or DSH for the patient's portion (i.e., deductibles, copays, and/or coinsurances) to be payment in full.
- iv. For patients not covered in whole or part by either Medicare or an individual health insurance plan:
- (1) Contractor shall submit an original invoice for the full billed amount. Such invoices must be provided as described in this Agreement.

- C. In all cases, the DSH may review any submitted Medicare claim form(s) for erroneous information that would have caused the claim to be denied and dispute the invoice. The DSH shall not be responsible for reimbursing Contractor for that portion of their costs should a claim be denied for any such erroneous information. Examples of erroneous information include, but are not limited to, failure to use proper modifiers or condition codes when appropriate for incarcerated patients and proper use of demographic information.
- D. In all cases, if Contractor is denied payment due to failure on their part to submit claims for services within the required timeframes, DSH shall not be responsible for reimbursing Contractor for that portion of their costs.
- E. In the event that Contractor submits an invoice that is less than the applicable Medicare rate multiplied as described herein, the DSH shall compensate Contractor at the invoiced rate.
- F. If Contractor is audited by CMS or their designee or audited by the patient's private insurer, and the audit finds that Contractor has been overpaid, Contractor shall reimburse all applicable parties as noted in the audit findings.
- G. The 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 the DSH. The estimates listed below 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 below will be used solely for the purposes of encumbering funds. The 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 the 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 the 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 the DSH and for the purposes of accounting, the DSH may adjust the total proposed expenditure for each fiscal year as needed. In no event will this change the contract price for the services actually rendered.
- 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, the DSH may elect to reject the invoices for payment as untimely and Contractor will be deemed to have waived any right to payment of the late invoices.
- J. The DSH may refer patients for services to Contractor who are classified under Penal Code section 2684, and are therefore the California Department of Corrections and Rehabilitation (CDCR) inmates. Except in emergency situations where notification shall occur during or after the provision of services, the DSH shall identify these patients to Contractor prior to

services being rendered. For emergencies, DSH will notify Contractor of the classification on the date of services or a reasonable time thereafter. With respect for services rendered to Penal Code section 2684 patients, Contractor shall submit all medical bills for these patients to the CDCR for payment. The CDCR shall be solely responsible for the payment of these invoices.

- K. The Contractor shall not be reimbursed for any travel-related expenses. All travel shall be at the expense of the contractor.

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

**1. SUBCONTRACTS:**

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

**2. PUBLICATIONS AND REPORTS:**

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

**3. PROGRESS REPORTS:**

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

**4. PRESENTATION:**

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

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

- A. DSH's staff shall be permitted to work side-by-side with Contractor's staff to the extent and under conditions as directed by DSH Contract Manager. In this connection, DSH's staff shall be given access to all data, working papers, etc., which Contractor seeks to utilize.

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

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

LEGAL NOTICE

*This report was prepared as an account of work sponsored by the Department of State Hospitals (Department) but does not necessarily represent the views of the Department or any of its employees except to the extent, if any, that it has formally been approved by the Department. For information regarding any such action, communicate directly with the Department at P.O. Box 952050, Sacramento, California, 94252-2050. Neither said Department nor the State of California, nor any officer or employee thereof, or any of its contractors or subcontractors makes any warranty, express or implied, or assumes any legal liability whatsoever for the contents of this document. Nor does any party represent that use of the data contained herein, would not infringe upon privately owned rights without obtaining permission or authorization from any party who has any rights in connection with the data.*

**7. PROVISIONS RELATING TO DATA:**

- A. "Data" as used in this Agreement means recorded information, regardless of form or characteristics, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or be used to define a design or

process; or support a premise or conclusion asserted in any deliverable document called for by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, charts, tables, mathematical modes, collections or extrapolations of data or information, etc. It may be in machine form, as punched cards, magnetic tape, computer printouts, or may be retained in computer memory.

- B. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by Contractor in the performance of this Agreement at the expense of DSH, together with complete documentation thereof, shall be treated in the same manner as generated data.
- C. "Deliverable data" is that data which under terms of this Agreement is required to be delivered to DSH. Such data shall be property of the State of California and DSH.
- D. Prior to the expiration of any legally required retention period and before destroying any data, Contractor shall notify DSH of any such contemplated action; and DSH may within 30 days of said notification determine whether or not this data shall be further preserved. DSH shall pay the expense of further preserving this data. DSH shall have unrestricted reasonable access to the data that is preserved in accordance with this Agreement.
- E. Contractor shall use best efforts to furnish competent witnesses to testify in any court of law regarding data used in or generated under the performance of this Agreement.
- F. All financial, statistical, personal, technical and other data and information relating to DSH's operation, which are designated confidential by the State or DSH and made available to carry out the Agreement, or which become available to Contractor in order to carry out this Agreement, shall be protected by Contractor from unauthorized use and disclosure.
- G. If DSH determines that the data and information are inadequately protected by Contractor or its subcontractors, DSH shall provide notice of its determination and Contractor and/or its subcontractors shall improve the protections to DSH's satisfaction which shall be evidenced by written approval of the protections implemented.

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

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

#### **9. SUBSTITUTIONS:**

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

#### **10. NOTICE:**

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

**11. WAIVER:**

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

**12. GRATUITIES AND CONTINGENCY FEES:**

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

**13. INTEGRATION CLAUSE:**

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

**14. CAPTIONS:**

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

**15. PUBLIC HEARINGS:**

- A. If public hearings on the subject matter dealt with in this Agreement are held within one year from the Agreement expiration date, Contractor shall make available to testify the personnel assigned to this Agreement at the hourly rates specified in Contractor's proposed budget.

DSH shall reimburse Contractor for travel of said personnel at the Agreement, or if none, at State rates for such testimony as may be requested by DSH.

**16. FORCE MAJEURE:**

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

**17. LITIGATION:**

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

**18. DISPUTES:**

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

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

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

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

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

**21. USE OF STATE FUNDS:**

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

**22. CANCELLATION PROVISIONS:**

- A. Unless otherwise specified, this Agreement may be canceled at any time by DSH, in writing, with thirty (30) days advance notice. If canceled, payment shall be made only for the provision of services expressly authorized by this Agreement until the date of cancellation and only at the rates set forth in Exhibit B, Budget Detail. In the case of early termination, a final payment will be made to Contractor upon receipt of an invoice covering all authorized costs, at the rates set forth in Exhibit B, incurred prior to the date of cancellation or termination. DSH shall not be responsible for unamortized costs, overhead or capital costs or any other related costs, including but, not limited to costs incurred in connection with the cancellation of leases or contracts pertaining to facilities, equipment or supplies, labor and employee benefits costs, and expenditures incurred after the date of notice of cancellation.
- B. If DSH determines that Contractor has breached a material term of the Agreement and has not cured the breach or ended the violation within the time specified by DSH, DSH may terminate the contract by providing notice to Contractor. DSH Information Security Officer shall report as

required HIPAA violations to the Secretary of the U.S. Department of Health and Human Services.

- C. Failure to comply with section 1 or 6 of this Exhibit, or a violation of section 12 of this Exhibit, shall be deemed a material breach of this Agreement.

**23. EMPLOYMENT PROVISIONS:**

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

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

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

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

- A. DSH reserves the right to conduct fingerprinting, drug testing, and/or security clearance through the Department of Justice, Bureau of Criminal Identification and Information (BCII), prior to award and at any time during the term of the Agreement, in order to permit Contractor, their personnel, subcontractors, and other service providers through this Agreement access to State premises. DSH further reserves the right to terminate this Agreement should a threat to security be determined.
- B. At the sole discretion of DSH, and in accordance with each facility's Infection Control Policy, Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement providing services may be required to provide DSH with Tuberculin (TB) test results. These test results shall indicate completion of the two-step TB testing process using the Mantoux method. The first step is a tuberculin skin test (TST) completed within the last 12 months prior to the date the tested person is to provide services to a DSH facility. The second step is a TST which must

be completed within the 30 days prior to the date the tested person is to provide services to a DSH facility, unless otherwise specified.

- C. If both of the documented results of the TST provided  $\leq 0-9$ /mm of induration, then the tested person may be cleared to provide services. However, if the documented result of the TST is  $\geq 10$ /mm of induration, then they shall be subject to additional testing and/or clearances before he or she is allowed to work at a DSH facility.
- D. DSH reserves the right, in its sole and absolute discretion, to take measures to minimize the transmission of influenza. Contractor, their personnel, subcontractors, and other service providers through this Agreement may be required to either a) show written proof that they have received an influenza vaccine, or b) complete an Influenza Declination Form, which will be provided upon request. In addition, all non-vaccinated providers may be required to wear a mask. In its sole and absolute discretion, DSH may elect to provide free influenza vaccines to Contractor, their personnel, subcontractors, and other service providers through this Agreement.

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

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

**27. AMENDMENTS:**

- A. The parties reserve the right to amend this Agreement as mutually agreed upon. This is in addition to the right to amend for other reasons contained in this Agreement or noted in the solicitation that resulted in this Agreement, if applicable. Any amendment shall be in writing and signed by both parties and be approved by the Department of General Services if such approval is required.

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

**2. DEFINITIONS:**

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

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

**B. Specific Definitions**

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

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

**A. Contractor agrees to:**

- i. not use or disclose confidential information other than as permitted or required by the agreement between DSH and Contractor or as required by law. Any use or disclosure of DSH confidential information shall be the Minimum Necessary;
- ii. use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic confidential information, to prevent use or disclosure of confidential information other than as provided for by the agreement with DSH;
- iii. report to DSH any use or disclosure of confidential information not provided for by the agreement with DSH of which it becomes aware, including breaches of unsecured protected health information as required at 45 C.F.R. section 164.410, and any security incident of which it becomes aware;

- iv. in accordance with 45 C.F.R. sections 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agents and subcontractors that create, receive, maintain, or transmit confidential information on behalf of Contractor enter into a written agreement with Contractor agreeing to be bound to the same restrictions, conditions, and requirements that apply to Contractor with respect to such information;
- v. to provide access and make available confidential information in a designated record set to DSH or to an Individual in accordance with 45 C.F.R. section 164.524 and California Health and Safety Code section 123100 et seq. Designated Record Set shall mean the group of records maintained for DSH that includes medical, dental, and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DSH health plans; or those records used to make decisions about individuals on behalf of DSH. Contractor shall use the forms and processes developed by DSH for this purpose and shall respond to requests for access to records transmitted by DSH within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none;
- vi. if Contractor maintains an Electronic Health Record with PHI and an Individual requests a copy of such information in an electronic format, Contractor shall provide such information in an electronic format to enable DSH to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e);
- vii. if Contractor receives data from DSH that was provided to DSH by the Social Security Administration, upon request by DSH, Contractor shall provide DSH with a list of all employees, subcontractors, and agents who have access to the Social Security data, including employees, contractors, and agents of its subcontractors and agents;
- viii. make any amendment(s) to confidential information in a Designated Record Set as directed or agreed to by DSH pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy DSH's obligations under 45 C.F.R. section 164.526;
- ix. to document and make available to DSH or (at the direction of DSH) to an Individual within 15 days such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the Individual for an accounting of disclosures of PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 C.F.R. section 164.528 and 42 U.S.C. section 17935(c). If Contractor maintains electronic health records for DSH as of January 1, 2009, Contractor must provide an accounting of disclosures, including those disclosures for treatment, payment, or health care operations, effective with disclosures on or after January 1, 2014. If Contractor acquires electronic health records for DSH after January 1, 2009, Contractor must provide an accounting of disclosures, including those disclosures for treatment, payment, or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting;
- x. to the extent Contractor is to carry out one or more of DSH's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to DSH in the performance of such obligation(s); and

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

**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 800-68 and the SANS Institute Password Protection Policy.

- i. Contractor shall implement the following security controls on each server, workstation, or portable (e.g., laptop computer) computing device that processes or stores confidential, personal, or sensitive data:
  - (1) network-based firewall and/or personal firewall,
  - (2) continuously updated anti-virus software and
  - (3) patch-management process including installation of all operating system/software vendor security patches.
- ii. Encrypt all confidential, personal, or sensitive data stored on portable electronic media (including, but not limited to, CDs and thumb drives) and on portable computing devices (including, but not limited to, laptop computers, smart phones and PDAs) with a solution that uses proven industry standard algorithms.
- iii. Prior to disposal, sanitize all DSH confidential data contained in hard drives, memory devices, portable electronic storage devices, mobile computing devices, and networking equipment in a manner consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-88.
- iv. Contractor shall not transmit confidential, personal, or sensitive data via e-mail or other Internet transport protocol over a public network unless, at minimum, a 128-bit encryption method (for example AES, 3DES, or RC4) is used to secure the data.

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

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

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

- A. During the term of 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.

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

- A. Contractor shall immediately notify the DSH Chief Information Security Officer by telephone call and email upon the discovery of a breach of confidential information in all forms (paper, electronic, or oral) if the confidential information was, or is reasonably believed to have been, acquired by an unauthorized person, or within 24 hours by email or fax of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of confidential information in violation of the agreement with DSH, or potential loss of DSH confidential data. If the security incident occurs

after business hours or on a weekend or holiday, notification shall be provided by calling the DSH Chief Information Security Officer. Contractor shall take:

- i. prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
- ii. any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

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

- A. Contractor shall immediately investigate such security incident, breach, or unauthorized use or disclosure of DSH confidential information. Within 8 hours of discovery (of the breach), Contractor shall notify the DSH Chief Information Security Officer of at least the following:
  - i. the data elements involved and the extent of the confidential data involved in the breach;
  - ii. a description of the unauthorized person(s) known or reasonably believed to have improperly acquired, accessed, used, transmitted, sent or disclosed confidential information;
  - iii. a description of where and when the confidential information is believed to have been improperly acquired, accessed, used, transmitted, sent or disclosed;
  - iv. a description of the probable causes of the improper acquisition, access, use, transmission, sending, or disclosure; and
  - v. whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are required.

#### **11. WRITTEN REPORT:**

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

#### **12. NOTIFICATION OF INDIVIDUALS:**

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

**13. DSH CONTACT INFORMATION:**

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

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 1600 9 <sup>th</sup> Street, Room 433 Sacramento, CA 95814  Email: <a href="mailto:yamin.scardigli@dsh.ca.gov">yamin.scardigli@dsh.ca.gov</a> Telephone: 916-562-3721	Chief Information Security Officer Information Security Office 1600 9 <sup>th</sup> Street, Suite 250 Sacramento, CA 95814  Email: <a href="mailto:iso@dsh.ca.gov">iso@dsh.ca.gov</a> and <a href="mailto:security@dsh.ca.gov">security@dsh.ca.gov</a> Telephone: 916-654-4218

**14. INTERNAL PRACTICES:**

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

**15. EMPLOYEE TRAINING AND DISCIPLINE:**

- A. Contractor shall train and use reasonable measures to ensure compliance with the requirements of 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.

- 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), upon DSH's knowledge of a material breach or violation of this Exhibit by Contractor, DSH shall:
  - i. Provide an opportunity for Contractor to cure the breach or end the violation and terminate the agreement if Contractor does not cure the breach or end the violation within the time specified by DSH; or
  - ii. Immediately terminate the agreement if Contractor has breached a material term of this Exhibit and cure is not possible.