

**AMENDMENT TO BOARD OF SUPERVISORS
AGREEMENT NO. 19-133 and 19-133-A1**

This Second Amendment to BOS Agreement No. 19-133 is entered into this 25TH day of May, 2021, by and between the COUNTY OF MENDOCINO, a political subdivision of the State of California, hereinafter referred to as "COUNTY" and Department of State Hospitals, hereinafter referred to as "CONTRACTOR".

WHEREAS, BOS Agreement No. 19-133 was entered into on May 1, 2019; BOS Agreement No. 19-133-A1 was entered into on April 6, 2021 and

WHEREAS, upon execution of this document by the Chair of the Mendocino County Board of Supervisors and Department of State Hospitals, this document will become part of the aforementioned contract and shall be incorporated therein; and

WHEREAS, it is the desire of CONTRACTOR and COUNTY to extend the termination date set out in the original BOS Agreement No. 19-133 and BOS Agreement No. 19-133-A1, from April 30, 2021 to June 30, 2021; and

WHEREAS, it is the desire of CONTRACTOR and COUNTY to increase the dollar amount set out in the BOS Agreement No. 19-133 and BOS Agreement No. 19-133-A1, from \$1,250,359.00 to \$1,367,536.00; and

NOW, THEREFORE, we agree as follows:

1. The termination date set out in the original BOS Agreement No. 19-133 and BOS Agreement No. 19-133-A1 will be extended from April 30, 2021 to June 30, 2021.
2. **Amount of agreement:** The amount set out in the original BOS Agreement No. 19-133 and BOS Agreement No. 19-133-A1 will be changed from \$1,250,359.00 to \$1,367,536.00 with the addition of \$117,177.00.
3. Exhibit B, Budget Detail and Payment Provisions, 5.A. Budget Detail, is revised as follows:
 - A. The maximum amount of this Agreement shall not exceed \$1,367,536.00.

All other terms and conditions of original BOS Agreement No. 19-133 and BOS Agreement No. 19-133-A1 shall remain in full force and effect

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

DEPARTMENT FISCAL REVIEW:

De Brest May 10, 2021
DEPARTMENT HEAD DATE
Budgeted: ☒ Yes ☐ No
Budget Unit: 2510
Line Item: JA - 825490
Grant: ☐ Yes ☒ No
Grant No.: n/a

CONTRACTOR/COMPANY NAME:

By: Paul Bernal (see page 4)
NAME AND ADDRESS OF CONTRACTOR:
Department of State Hospitals (DSH)
1600 9th Street, Room 101
Sacramento, CA 95814

Attn: Selene Mujica
Ph: 916-651-7913
Em: selene.mujica@dsh.ca.gov

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY OF MENDOCINO

By: Dan Gjerde
DAN GJERDE, Chair
BOARD OF SUPERVISORS **MAY 28 2021**

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: Amap
Deputy **MAY 28 2021**

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: Amap
Deputy **MAY 28 2021**

INSURANCE REVIEW:

By: Carmel J. Angelo
Risk Management

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

CHRISTIAN M. CURTIS,
County Counsel

By: Brina Blanton
Deputy

EXECUTIVE OFFICE/FISCAL REVIEW:

APPROVAL RECOMMENDED

By: Christopher
Deputy CEO

Signatory Authority: \$0-25,000 Department; \$25,001-50,000 Purchasing Agent; \$50,001+ Board of Supervisors
Exception to Bid Process Required/Completed ☒ n/a
Mendocino County Business License: ☒ Exempt
Exempt Pursuant to MCC Section: _____

EXHIBIT A
SCOPE OF WORK**1. CONTRACTED PARTIES:**

- A. Mendocino County Sheriff's Office (MCSO), hereafter referred to as Contractor, agrees to provide restoration of competency treatment services to those male and female individuals charged with felony offenses and found by the courts to be Incompetent to Stand Trial (IST) due to mental illness pursuant to Penal Code (PC) section 1370 and who are currently incarcerated, hereafter referred to as "Patient Inmates," (as defined in Section 6) to the Department of State Hospitals (DSH) pursuant to the terms and conditions of this Agreement.

2. SERVICE LOCATIONS:

- A. The Patient Inmates receiving restoration of competency treatment services under this Agreement shall remain in the sole legal and physical custody of the Mendocino County Sheriff's Office at the Mendocino County Jail located at 951 Low Gap Road, Ukiah, CA, 95482.

3. SERVICE HOURS:

- A. The restoration of competency treatment services shall be provided on an as needed basis. Medical services and all other services pursuant to the legal and physical custody of the Patient Inmates receiving restoration of competency treatment services under this Agreement shall be provided 24 hours per day, seven days a week, throughout the term of this Agreement.

4. PROJECT REPRESENTATIVES:

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

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

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

MCSO Contract Manager:	
Section/Unit: Corrections Division	
Attention: Timothy Pearce Jail Captain	
Address: 951 Low Gap Road Ukiah, CA 95482	
Phone: (707) 463-4559	Fax: (707) 463-6323
Email: pearcet@mendocinocounty.org	

MCSO Administrative Contact:	
Section/Unit: Fiscal Division	
Attention: Juanita Dreiling Administrative Services Manager	
Address: 951 Low Gap Road Ukiah, CA	
Phone: (707) 463-4409	Fax: (707) 468-3404
Email: dreilingj@mendocinocounty.org	

Mendocino County Jail – Medical Contact:	
Section/Unit: NaphCare	
Attention: Adrienne Carfi, R.N. Health Services Administrator	
Address: 951 Low Gap Road Ukiah, CA 95482	
Phone: (707) 463-4538	Fax: (707) 463-6522
Email: Adrienne.Carfi@naphcare.com	

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

5. PROGRAM IMPLEMENTATION FUNDS:

- A. The DSH shall reimburse Contractor for initial program implementation costs incurred under this Agreement. The implementation costs shall include, but are not limited to:
- i. Initial setup of office space;
 - ii. Initial administrative operating expenses and equipment;
 - iii. Development of an operational clinical Policy and Procedure Manual; and
 - iv. Orientation and training time for new staff on clinical operations, policies, and procedures.

6. SUMMARY OF WORK TO BE PERFORMED:

- A. Contractor shall administer the delivery of Jail-Based Competency Treatment (JBCT) program services including, but not limited to:
- i. Provide restoration of competency treatment services to Patient Inmates referred and admitted to the JBCT program,
 - ii. Provide board and care for Patient Inmates referred and admitted to the JBCT program,
 - iii. Provide routine and non-routine medical care for Patient Inmates referred and admitted to the JBCT program, and
 - iv. Provide any administrative services required to provide services under this Agreement.

7. CONTRACTOR RESPONSIBILITIES:

Contractor shall administer the delivery of JBCT program services, including restoration of competency treatment services, either directly or through contract, for male and female Patient Inmates.

A. Custodial Responsibilities:

- i. Contractor shall provide, or otherwise arrange for, any and all transportation for Patient Inmates.
- ii. Contractor shall retain sole legal and physical custody of Patient Inmates under this Agreement.
- iii. Contractor shall provide for the care, confinement, and security of Patient Inmates in accordance with all federal and state laws, standards, regulations, policies, procedures, and court orders applicable to the Jail, including the Prison Rape Elimination Act.

- iv. Contractor's custody staff assigned to the JBCT program shall receive Enhanced Mentally Ill Offender or Crisis Intervention Training (CIT) provided by Contractor, and shall participate in the JBCT program treatment team meetings.
- v. Contractor shall provide all Patient Inmates with the full range of Routine Medical Care available to other inmates of the Jail, and is financially responsible for such care. Contractor agrees that the cost of all Routine Medical Care is included in the per diem rate charged to the DSH. For the purposes of this Agreement, Routine Medical Care shall be defined as all medical, dental, and mental health care as well as the cost of medical supplies, restoration of competency treatment services, and any formulary prescription medications which are provided to Patient Inmates, including prescribed psychotropic medications. Non-formulary prescription medications shall not be provided to Patient Inmates except in conjunction with Non-Routine Medical Care.
- vi. For the purposes of this Agreement, Non-Routine Medical Care shall be defined as major medical operations or surgeries (such as heart transplants), continuation of any experimental medication, services that cannot be provided onsite at the Jail, and emergency medical care. If a Patient Inmate requires Non-Routine Medical Care, Contractor shall notify the DSH Contract Manager or designee immediately in writing and by phone, or as soon as possible. The DSH reserves the right to either admit the Patient Inmate to a state hospital for treatment or require Contractor to ensure that the Patient Inmate is provided care at a facility designated by Contractor. In the event the Patient Inmate is admitted to an outside facility, the DSH shall direct Contractor to instruct the facility providing care to invoice the DSH directly for the full cost of care provided by submitting the invoice to the attention of the DSH Contract Manager. The DSH shall establish a separate Agreement to compensate for the cost of care.
- vii. In the event of an emergency, Contractor shall proceed immediately with necessary medical treatment. Contractor shall notify the DSH immediately regarding the nature of the illness or injury as well as the types of treatment provided. The DSH shall direct Contractor to instruct the facility providing care to invoice the DSH directly for the full cost of care provided by submitting the invoice to the attention of the DSH Contract Manager. The DSH shall establish a separate Agreement to compensate for the cost of care.
- viii. For all Routine and Non-Routine Medical Care, Contractor shall be responsible for the security and transportation, including emergency transportation. Contractor agrees that all such costs are included in the per diem rate charged to the DSH.

B. Restoration of Competency Service Responsibilities:

- i. When providing restoration of competency treatment services, Contractor shall adhere to the program outlines contained in Exhibit A, Attachment 1, Program Elements.
- ii. Contractor shall ensure that a preliminary evaluation of each potential JBCT Patient Inmate is conducted through, at a minimum, a review of the medical and mental health records of each prospective Patient Inmate prior to admission into the JBCT program.
- iii. Contractor shall ensure that priority for admissions to the JBCT program shall be based on commitment date, unless an exception is made based on one of the factors listed in California Code of Regulations (CCR) Title 9, Section 4710. In the event that multiple felony IST defendants have the same commitment date, admission shall be scheduled based on the availability of the committing county to transport the defendants.

- iv. Should Contractor determine, based on clinical considerations, patient history, or other factors, that a current or potential Patient Inmate is, or likely shall be, violent and a significant danger to others participating in the JBCT program, Contractor shall inform the DSH Contract Manager immediately in writing, and by phone. Contractor agrees that the decision to remove such a Patient Inmate from the JBCT program is at the sole discretion of the DSH, and the DSH shall not unreasonably withhold such permission. If a Patient Inmate is removed from the JBCT program, the DSH shall arrange to have such Patient Inmate admitted to a state hospital forthwith as is permitted under the admission requirements set forth in CCR, Title 9, sections 4700, et seq. Contractor shall continue to treat the Patient Inmate in the JBCT program until such arrangements are made.
- v. Upon Restoration of Competency:
Contractor shall resume sole responsibility for and all costs associated with mental health care, crisis intervention, ongoing counseling and care; including the prescription of psychotropic medications for the Patient Inmates restored to competence and transferred from the JBCT program.

C. General Responsibilities:

- i. Contractor shall participate in any job-related training provided or required by the DSH which shall not exceed eight hours annually.
- ii. 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 licenses, permits, and certificates 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.
- iii. Contractor shall provide services as outlined in this Agreement. Contractor shall be responsible to fulfill the requirements of the Agreement and shall incur expenses in relation to this contract and invest sufficient amount of time and capital to fulfill the obligations as contained herein. Any expenses related to this Agreement that are not covered under the budget set forth in Exhibit B, subsection 5, shall be approved by the DSH prior to incurring the expenditures in order to be reimbursable, except in the event of an emergency, where prior approval is impracticable.
- iv. The DSH, Contractor, and its subcontractors shall keep informed of, observe, comply with, and cause all of its agents and employees to observe and to comply with all prevailing federal, state, and local laws, rules, and regulations made pursuant to said federal, state, and local laws which in any way affect the conduct of the work of this Agreement. If any conflict arises between provisions of the plans and specifications and any such law above referred to, then Contractor shall immediately notify the state in writing.
- v. Unless otherwise specified, this Agreement may be canceled at any time by Contractor, in writing, with 50 days advance notice. The DSH may terminate the Agreement pursuant to section 7 of Exhibit C if Contractor or its subcontractors fails to comply with a federal, state, or local law and the noncompliance, based on the facts and circumstances, would constitute a material breach of this Agreement under California law.
- vi. Contractor shall ensure that JBCT program activities only be performed in county jail facilities not subject to Senate Bill 844: Jail Financing Lease Restrictions.

8. DSH RESPONSIBILITIES:

- A. The DSH shall coordinate with the state hospitals to address issues related to admissions to the JBCT program and transfers from the JBCT program to the state hospitals. The order of admission to a state hospital shall be made pursuant to CCR, Title 9, sections 4700, et seq.
- B. The DSH may monitor Contractor's clinical treatment services through onsite visits. Contractor understands and agrees that it may be subject to at least four onsite visits per year.
- C. Rights of the DSH to Perform Quality Assurance and Financial Audits/Reviews
 - i. The DSH may routinely evaluate the work performance of Contractor, Contractor's personnel, subcontractors, or other parties associated with Contractor to determine if the DSH standards and departmental policies and procedures are being maintained. If it is found that any party fails to perform or is physically or mentally incapable of providing services as required by this Agreement, then that party shall not perform services for the DSH.
 - ii. The DSH may monitor and evaluate services provided in fulfillment of the requirements of this Agreement, as detailed in Exhibit A. Such monitoring and evaluation may occur on a regular cycle or as deemed necessary by the Contract Manager. The DSH retains sole and absolute discretion in determining any such evaluation schedule.
 - iii. Inspections may be conducted by the DSH staff at 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 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.
 - v. If, as a result of an audit and examination, the DSH is informed of underpayments or overpayments, the DSH shall notify Contractor of the need for payment or reimbursement. Upon receipt of a final audit report, Contractor has 30 days to reimburse any overpayment or to dispute or challenge the report. Contractor and the DSH shall confer and negotiate in good faith with respect to any disputed portion of the final audit report to reach agreement with respect to adjustments, payments, and reimbursements.
 - vi. The DSH shall submit its findings to Contractor and establish a deadline for correcting any deficiencies in fulfilling the obligations set forth in this section. Failure by Contractor to timely correct deficiencies shall be reason for termination of services under this Agreement.

9. PERFORMANCE MEASURES:

- A. Complete and Timely Provision of Services
 - i. Expectations: Contractor is expected to provide all services, including any and all required reports, in a timely manner – in accordance with timelines established in Exhibit A, Scope of Work.
 - ii. Penalties: Should Contractor not provide all services, including any and all required reports in a timely manner, the DSH may choose to terminate this Agreement. Additionally, the DSH may find

Contractor to be not responsible in provision of services and evaluate this in future contracting opportunities.

10. AMENDMENTS:

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

EXHIBIT A, ATTACHMENT 1
PROGRAM ELEMENTS

1. PROGRAM ELEMENTS

- A. Contractor shall coordinate with the committing court to ensure all required documents listed under Penal Code section 1370, subdivision (a)(3) are provided by the court for all Patient Inmates upon referral.
- B. Psychological Assessment Protocol
 - i. If current assessments and testing are not available upon admission, Contractor shall administer a battery of individualized psychological assessments and testing upon admission. Standardized and validated psychological tests shall be utilized to complete a preliminary assessment of the Patient Inmate's current functioning, likelihood of malingering, and current competency to stand trial. Impediments to trial competency may be ascertained through the use of the following preliminary assessment instruments including, but not limited to:
 - 1. Document review and clinical Interview. The psychologist shall obtain information pertaining to the Patient Inmate's psychosocial, psychiatric, legal history, and barriers to competency;
 - 2. Assessment of Malingering (as clinically indicated). *Miller Forensic Assessment of Symptoms (M-FAST)*;
 - 3. Assessment of Trial Competence. *Evaluation of Competency to Stand Trial-Revised (ECST-R)*, the *MacArthur Competence Tool – Criminal Adjudication (MacCAT-CA)*, *Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR)*; and
 - 4. Severity of Psychiatric Symptoms. *Brief Psychiatric Rating Scale (BPRS)*.
 - ii. Contractor shall complete additional malingering-specific assessments, integrating additional observable data reported by various disciplines, if preliminary assessment suggests the presence of malingering. If the screening instruments administered during the preliminary assessment raise suspicion that the primary barrier to trial competency is malingering, the following may also be utilized including, but not limited to:
 - 1. *Structured Interview of Reported Symptoms – Second Edition (SIRS-2)*;
 - 2. *Test of Memory Malingering (TOMM)*;
 - 3. *Georgia Atypical Presentation (GAP)*;
 - 4. *Structured Inventory of Malingered Symptomatology (SIMS)*; or
 - 5. *Inventory of Legal Knowledge (ILK)*.
 - iii. Contractor shall administer further cognitive functioning tests based on the specific cognitive deficit identified during the preliminary assessment. If the screening instruments administered during the preliminary assessment raise suspicion that the primary barrier to trial competency is cognitive deficits, the following may also be utilized including, but not limited to:
 - 1. *Repeatable Battery for the Assessment of Neuropsychological Status (RBANS)*;
 - 2. *Wide Range Achievement Test 4 (WRAT4)*; or
 - 3. *Montreal Cognitive Assessment (MoCA)*.

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

C. Individualized Treatment Program

- i. Contractor shall identify specific deficits that result in incompetence to stand trial upon admission. Each deficit shall be listed on the individualized treatment plan, and shall be targeted in the Patient Inmate's treatment.
- ii. Contractor shall provide an individualized restoration program as indicated by the Patient Inmate's psychiatric condition, level of functioning, and legal context.
- iii. Contractor shall tailor individualized treatment regimens to the Patient Inmate's specific barrier(s) to trial competency. Deficits identified in the competency assessment prior to and upon admission to the JBCT program shall be listed in the Patient Inmate's treatment plan and addressed by specific treatment interventions.
- iv. Contractor shall conduct case conferences after each training session or as needed to reassess Patient Inmates' progress toward restoration of trial competence and to determine whether additional treatment elements need to be incorporated into Patient Inmates' treatment plans.

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

- i. Contractor shall provide educational materials presented in multiple learning modes to each Patient Inmate as needed, e.g., a simple lecture format may be replaced with learning experiences involving discussion, reading, video, and experiential methods of instruction, such as role-playing or mock trial.
- ii. Contractor shall address the following elements in the education modalities of the competency restoration program as needed, including but not limited to:
 - 1. Criminal charges;
 - 2. Severity of charges, namely Felony vs. Misdemeanor;
 - 3. Sentencing;
 - 4. Pleas, including Guilty, Not Guilty, Nolo Contender, and Not Guilty By Reason of Insanity;
 - 5. Plea bargaining;
 - 6. Roles of the courtroom personnel;
 - 7. Adversarial nature of trial process;

8. Evaluating evidence;
9. Courtroom behavior;
10. Assisting counsel in conducting a defense;
11. Probation and Parole; and
12. Individualized instruction as needed.

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

E. Medication Administration and Consent

- i. Contractor shall obtain proper authorization (e.g., informed consent for treatment or medication issues) from the Patient Inmate as soon as possible, in accordance with professional standards of care and court practices.
- ii. Contractor shall provide strategies to promote and incentivize voluntary psychotropic medication compliance.
- iii. If involuntary psychotropic medication is not ordered by the court at time of commitment of a Patient Inmate to the JBCT program and the treating psychiatrist determines that psychotropic medication has become medically necessary and appropriate, Contractor shall request that the court make an order for the administration of involuntary psychotropic medication.
- iv. Contractor shall administer involuntary psychotropic medication when medically necessary and appropriate upon the issuance of the court order.

F. Suicide Prevention/Adverse Events

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

G. Data Deliverables

- i. The DSH shall provide a standardized data collection template. Contractor shall complete and submit this data collection to the DSH on a weekly basis with a deadline to be determined by the DSH. The template includes, but is not limited to, the following data elements:

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

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

H. Reporting Requirements

- i. Contractor shall submit a written report to the court, the community program director of the county or region of commitment, and the DSH Contract Manager concerning the Patient Inmate's progress toward recovery of trial competence within 90 days of a commitment. The report shall include a description of any antipsychotic medication administered to the Patient Inmate and its effects and side effects, including effects on the Patient Inmate's appearance or behavior that would affect the Patient Inmate's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner.
- ii. Contractor shall verbally report any escape within 24 hours to the court that made the commitment, the prosecutor in the case, the Department of Justice, and the DSH Contract Manager, with a written report to follow within five business days.
- iii. Contractor shall file a certificate of restoration with the court that made the commitment when the Program Director or their designee determines that the Patient Inmate has regained trial competence, or when a determination has been made that the Patient Inmate lacks the capacity to attain competency.

2. TREATMENT PROTOCOL

- A. JBCT is an intensive treatment program that quickly facilitates trial competency.
- B. Contractor shall provide counseling to each Patient Inmate as needed to promote participation in treatment and to promote restoration. Counseling sessions should be used for competency education, understanding and management of mental illness, encouraging physical exercise and active participation in available mental, educational, and/or socialization programs, and/or to discuss key legal elements of the individual's case. Specific trial competency issues should be addressed individually, e.g., a Patient Inmate understands court proceedings but struggles to apply the knowledge to their individual case.
- C. Contractor's psychiatrist shall see each Patient Inmate as needed. A psychiatric assessment is a necessary component of the admission process, with particular focus on the appropriateness of psychiatric medication in facilitating the restoration of competency. Follow-up assessments of medication effects and side effects shall be conducted as needed.

- D. At regular intervals, as needed, the multi-disciplinary treatment team shall review the progress of the Patient Inmate. The multi-disciplinary treatment team shall be responsible for providing progress reports to the committing court pursuant to Penal Code section 1370 subdivision (b)(1).

3. SAMPLE PROPOSED JBCT STAFFING MODEL:

Staff Allocation	
	FTE
Psychiatrist	0.120
Psychologist	0.300
Competency Trainer	0.600
Administrative Assistant	0.300
Medications	
Total	1.32

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. Contractor shall submit invoices for any and all initial program implementation costs associated with and pertaining to the items in Exhibit A, Scope of Work, Section 5, "Program Implementation Funds" within 12 months from the contract start date. The total initial program implementation costs invoiced shall not exceed **\$20,000.00.**
- D. The DSH is not responsible for services performed by Contractor outside of this Agreement, or for services performed other than as outlined in Exhibit A, Scope of Work and Exhibit A, Attachment 1, Program Elements.
- E. 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 either:

Department of State Hospitals
Attention: Accounting Office
1600 9th Street, Room 141
Sacramento, CA 95814

OR
DSHSAC.AccountsPayable@dsh.ca.gov

- B. Contractor shall submit one original and three copies of each invoice.
- C. Contractor shall type, not handwrite, each invoice on company letterhead. The DSH may provide an invoice template, if requested, which may be used in lieu of company letterhead.
- D. Contractor shall clearly note Contractor's name and address on each invoice. The name on the invoice must match the Payee Data Record (Std. 204) and the name listed on this Agreement.
- E. Contractor shall list and itemize in accordance with 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; and
 - v. Invoice total.

3. BUDGET CONTINGENCY CLAUSE:

- A. It is mutually agreed that, if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall no longer be in full force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any Fiscal Year (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 following that during which this Agreement was executed, the State may exercise its option to cancel this Agreement.
- D. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by Congress or the Legislature which may affect the provisions or terms of funding of this Agreement in any manner.

4. PROMPT PAYMENT CLAUSE:

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

5. BUDGET DETAIL:

- A. The maximum amount of this Agreement shall not exceed ~~\$1,250,359.00~~ **\$1,367,536.00**.
- B. Upon contract execution as well as receipt and approval of the single submitted invoice, the DSH shall compensate Contractor for program implementation costs that shall not exceed **\$20,000.00**.
- C. Contractor shall be reimbursed at an all-inclusive rate of **\$29,294.25** per Patient Inmate. Upon invoicing, Contractor shall clearly identify the number of new Patient Inmates admitted into the JBCT program throughout the period of the billing month.
- D. 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.
- E. Contractor must submit all invoices within a reasonable time but, no later than 12 months from the date that services were provided. If Contractor fails to provide invoices within 12 months of the date services are rendered, the DSH may elect to reject the invoices for payment as untimely and Contractor will be deemed to have waived any right to payment of the late invoices.
- F. Contractor shall not be reimbursed for any travel-related expenses. All travel shall be at the expense of Contractor.

EXHIBIT B, Attachment 1
SAMPLE INVOICE

[Insert Contractor's Department company logo/address]

INVOICE

DATE	INVOICE #

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

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

Reimbursement for New Patient Inmate Admissions (Not to Exceed 15 Admissions Annually Budget)			
Rate per Patient Inmate*		Total New Admissions	Total for [insert month being invoiced]
\$29,294.25	X	[Insert actual number of admissions that occurred during the month being invoiced]	= \$ _____

**All-Inclusive Rate of \$390.59 Applied to 75-Day Average Length of Stay*

Invoice Total for [insert month being invoiced]:	\$ _____
---	----------

PLEASE MAKE REMITTANCE PAYABLE TO:
[Insert Contractor's Department billing contact/address]Prepared By: [Signature here] _____
[Insert name/title here]

EXHIBIT C
GENERAL TERMS AND CONDITIONS

1. **APPROVAL**: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT**: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. **ASSIGNMENT**: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT**: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION**: ~~Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.~~
5. **INDEMNIFICATION**: *In the event the State Department of State Hospitals and a county jail treatment facility are determined to be comparatively at fault for any claim, action, loss, or damage which results from their respective obligations under such a contract, each shall indemnify the other to the extent of its comparative fault.*
6. **DISPUTES**: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. **TERMINATION FOR CAUSE**: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. **INDEPENDENT CONTRACTOR**: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.
12. TIMELINESS: Time is of the essence in this Agreement.
13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

- a. The Government Code Chapter on Antitrust claims contains the following definitions:
 - 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
 - 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
 - b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
 - c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
 - d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.
16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:
- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
 - b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)
20. LOSS LEADER: If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

1. SUBCONTRACTS:

- A. Except for subcontracts identified in accordance with the solicitation, Contractor shall submit any subcontracts in connection with this Agreement to 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.

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 this 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. 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, which is not disposed of by the Agreement, informally with the DSH Contract Manager. If the dispute cannot be disposed of at this level, then the dispute shall be decided by the DSH Deputy Director of Administration. All issues pertaining to this dispute shall be submitted in written statements and addressed to:

**Deputy Director of Administration
Department of State Hospitals
1600 9th Street, Room 101
Sacramento, California 95814**

Such written notice must contain the Agreement Number. Within ten days of receipt of the written grievance report from Contractor, the Deputy Director of Administration, or his/her designee, shall meet with Contractor and the Project Manager for the purposes of resolving the dispute. The decision of the Deputy Director shall be final. During the dispute process, Contractor shall proceed diligently with the performance of the Agreement. Neither the pendency of a dispute, nor its consideration by the Deputy Director of Administration, shall excuse Contractor from full and timely performance of the services required in accordance with the terms 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 10367.

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. At the sole discretion of the DSH, and in accordance with each facility's Infection Control Policy, the Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement providing services may be required to provide the 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 ≥ 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. If this Agreement was entered into pursuant to any statute expressly requiring that such agreements be let or awarded on the basis of competitive bids, then the parties may amend this Agreement for time or money at the same rates, 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.
- B. For all other agreements 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

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., Civil Code section 56 et seq. of the, the Confidentiality of Medical Information Act, Civil Code section 1798 et seq., the Information Practices Act of 1977, Health and Safety Code section 123100 et seq., 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 (HIPAA), including but not limited to part 1320 d et seq., of Title 42, United States Code and its implementing regulations (including but not limited to Title 45, Code of Federal Regulations, parts 160, 162 and 164 (2013)) ("HIPAA regulations") regarding the confidentiality and security of protected health information (PHI). The following provisions of this Exhibit E, set forth some of the requirements of these statutes and regulations. Exhibit E 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.

2. DEFINITIONS:

- A. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Covered Entity, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, PHI, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- B. Specific Definitions
- i. Contractor. Contractor shall generally have the same meaning as the term "business associate" at 45 Code of Federal Regulation, part 160.103 (2013).
- ii. HIPAA Rules. HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 Code of Federal Regulation, part 160 and Part 164 (2013).
- iii. Agreement. Agreement shall be the agreement referenced by the Agreement number set forth on this page's heading.
- iv. Personal Information. Personal Information shall have the same meaning as defined in Civil Code section 1798.3, subdivision (c).

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE:

- A. Contractor agrees to:
- i. not use or disclose PHI other than as permitted or required by the Agreement or as required by law,
- ii. use appropriate safeguards, and comply with Subpart C of 45 Code of Federal Regulation, part 164 (2013) with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement,

- iii. report to the DSH any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 Code of Federal Regulations, part 164.410 (2013), and any security incident of which it becomes aware,
- iv. in accordance with 45 Code of Federal Regulations, part 164.502(e)(1)(ii) and part 164.308(b)(2) (2013), if applicable ensure that any agents and subcontractors that create, receive, maintain, or transmit PHI on behalf of the Contractor enter into a written agreement with the Contractor agreeing to be bound to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information,
- v. make available PHI in a designated record set to the DSH as necessary to satisfy covered entity's obligations under 45 Code of Federal Regulations, part 164.524 (2013) and California Health & Safety Code section 123100,
- vi. make any amendment(s) to PHI in a designated record set as directed or agreed to by the covered entity pursuant to 45 Code of Federal Regulations, part 164.526 (2013), or take other measures as necessary to satisfy the covered entity's obligations under 45 Code of Federal Regulations, part 164.526 (2013),
- vii. maintain and make available the information required to provide an accounting of disclosures to the DSH as necessary to satisfy covered entity's obligations under 45 Code of Federal Regulations, part 164.528 (2013),
- viii. to the extent the Contractor is to carry out one or more of the DSH's obligation(s) under Subpart E of 45 Code of Federal Regulations, part 164 (2013), comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s) and
- ix. 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 PHI BY CONTRACTOR:

- A. Except as otherwise provided in this Agreement, Contractor, may use or disclose PHI to perform functions, activities or services identified in this Agreement provided that such use or disclosure would not violate federal or state laws or regulations.
- B. Contractor may not use or disclose the PHI except as provided and permitted or required by the Agreement or required by law.
- C. Contractor agrees to make uses and disclosures and requests for PHI consistent with the DSH's minimum necessary policies and procedures.
- D. Contractor may use and disclose PHI for the proper management and administration of the Contractor or to carry out the legal responsibilities of Contractor, provided that such uses and disclosures are required by law.
- E. Contractor may use PHI to provide data aggregation services related to the health care operations of the DSH. Data aggregation means the combining of PHI created or received by Contractor for the purposes of this Agreement with PHI received by Contractor in its capacity as Contractor of another HIPAA covered entity, to permit data analyses that relate to the health care operations of the 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 appropriate to the size and complexity of Contractor's operations and the nature and scope of its activities.

The information privacy and security program shall reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that it creates, receives, maintains, or transmits; and prevent the use or disclosure of PHI other than as provided for by this Agreement. 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., floppy disks 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 PHI, 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, personal (e.g., PHI) or sensitive data 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 PHI by Contractor or its subcontractors in violation of the requirements of this Agreement.

8. NOTIFICATION OF BREACH:

- A. During the term of this Agreement, Contractor shall report to the DSH any use or disclosure of information not provided for by its contract of which it became aware including breaches of unsecured PHI as required by Section 164.410 of the HIPAA regulations.

9. DISCOVERY OF BREACH:

- A. Contractor shall immediately notify the DSH Information Security Officer by telephone call and e-mail upon the discovery of breach of security of PHI in all forms (paper, electronic, or oral) if the PHI 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 PHI in violation of this Agreement, or potential loss of confidential data affecting this Agreement. If the incident occurs after business hours or on a weekend or holiday and involves PHI, notification shall be provided by calling the DSH 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 PHI or confidential data. Within 8 hours of discovery (of the breach), Contractor shall notify the DSH Information Security Officer of at least the following:
 - i. what data elements were involved and the extent of the 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 PHI or confidential data,
 - iii. a description of where and when the PHI or confidential data 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 (Agency) or 1798.82 (Business) 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 Information Security Officer shall approve the time, manner and content of any such notifications.

13. DSH CONTACT INFORMATION:

- A. Contractor shall direct communications to the DSH Information Security Officer and Contractor shall initiate contact as indicated herein. The 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 this Agreement to which it is incorporated.

**Information Security Officer
Department of State Hospitals – Sacramento
1600 9th Street, Room 260
Sacramento, CA 95814
Phone: (916) 654-5432
E-mail: ISO@dsh.ca.gov**

14. INTERNAL PRACTICES:

- A. Contractor shall make Contractor's internal practices, books, and records relating to the use and disclosure of PHI received from DSH, or created, maintained, or received by Contractor under this Agreement, available to the DSH or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the DSH or by the Secretary, for purposes of determining the DSH's compliance with the HIPAA regulations.

15. EMPLOYEE TRAINING AND DISCIPLINE:

- A. Contractor shall train and use reasonable measures to ensure compliance with the requirements of this Agreement by employees who assist in the performance of functions or activities under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Agreement, including by termination of employment.

16. EFFECT OF TERMINATION:

- A. Upon termination or expiration of this Agreement for any reason, Contractor shall return, at its sole expense, to the DSH all health records within five (5) business days or as otherwise specified in the request or notice to return records or, if agreed to by the DSH, destroy all PHI received from the DSH or created or received by the Contractor on behalf of the DSH, that Contractor still maintains in any form. Contractor shall retain no copies of such PHI.

However, if return or destruction is not feasible, Contractor shall continue to extend the protections and provisions of this Agreement to such information, and limit further use or disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of Contractor, its subcontractor(s), or its agent(s).

17. MISCELLANEOUS PROVISIONS:

- A. The DSH makes no warranty or representation that compliance by Contractor with this Agreement that the HIPAA regulations shall be adequate or satisfactory for Contractor's own purposes or that any information in Contractor's possession or control, or transmitted or received by Contractor, is or shall be secure from unauthorized use or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of PHI.
- 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 this Agreement, available to the DSH at no cost to the DSH to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the 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 subcontractor, employee, or agent, except where Contractor or its subcontractor, employee, or agent is a named adverse party.
- C. Nothing expressed or implied in the terms and conditions of this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the 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 this Agreement 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 this Agreement 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 this Agreement.

18. JUDICIAL OR ADMINISTRATIVE PROCEEDINGS:

- A. The DSH may immediately terminate this Agreement 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.