

Alameda County Sheriff's Office

Lakeside Plaza, 1401 Lakeside Drive, 12th Floor, Oakland, CA 94612-4305



Gregory J. Ahern, Sheriff

Director of Emergency Services
Coroner - Marshal

AGENDA ITEM _____ June 21, 2022

June 2, 2022

Honorable Board of Supervisors
County Administration Building
1221 Oak Street
Oakland, CA 94612

SUBJECT: RETROACTIVELY APPROVE AN AGREEMENT WITH THE DEPARTMENT OF STATE HOSPITALS

Dear Board Members:

RECOMMENDATION:

Retroactively approve an agreement with the Department of State Hospitals (DSH) for the Alameda County Sheriff's Office to provide logistics, equipment and security for DSH to perform incompetent to stand trial re-evaluation services for defendants in Santa Rita Jail for the contract period 7/1/21-6/30/24 in the amount of \$75,000.

DISCUSSION/SUMMARY:

The Department of State Hospitals performs re-evaluation services for individuals charged with felonies and deemed incompetent to stand trial (IST). These services will be performed remotely through telehealth and video conferencing with the purposes of re-evaluating competency status, psychotropic medication status and assessment for placement in an alternative community-based programs, including but not limited to mental health diversion or community-based restoration.

The Alameda County Sheriff's Office (ACSO) will provide DSH with relevant inmate medical records, including mental health and behavioral health records, and coordinate telehealth video interviews of felony defendants who have been selected by DSH to participate in this program. The ACSO will also provide the necessary secure setting, technology, equipment and security for these evaluations.

June 2, 2022

The Department of State Hospitals will compensate the ACSO at a flat rate of \$500 per IST evaluation and a one-time start-up cost reimbursement of \$5,000 for information technology support, equipment and software necessary to facilitate telehealth interviews, such as laptops or tablets and internet.

This agreement has been reviewed and approved, as to form, by County Counsel, Risk Management and Department of State Hospitals.

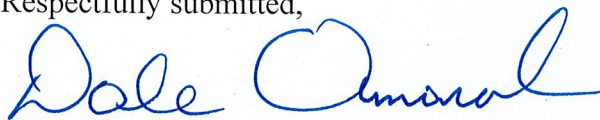
FINANCING:

No additional appropriation is required. The additional revenue is included in the Sheriff's Office FY 2022-2023 MOE budget. There will be no increase in net County cost as a result of your approval.

VISION 2026 GOAL:

The agreement between the Sheriff's Office and the Department of State Hospitals meets the 10X goal pathway of **Crime Free County** in support of our shared vision of **Safe and Livable Communities**.

Respectfully submitted,

A handwritten signature in blue ink that reads "Dale Ahern". The signature is fluid and cursive.

Gregory J. Ahern *for*
Sheriff-Coroner

GJA:ALY:aly

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER 21-76003-019	PURCHASING AUTHORITY NUMBER (If Applicable) DSH-4440
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1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Department of State Hospitals

CONTRACTOR NAME

Alameda County Sheriff's Office

2. The term of this Agreement is:

START DATE

July 1, 2021

THROUGH END DATE

June 30, 2024

3. The maximum amount of this Agreement is:

\$75,000.00

Seventy-Five Thousand Dollars and Zero Cents

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

Exhibits	Title	Pages
Exhibit A	Scope of Work	4
Exhibit B	Budget Detail and Payment Provisions	5
Exhibit C	General Terms and Conditions - 04/2017	4
+ - Exhibit D	Special Terms and Conditions	8
+ - Exhibit F	Information Privacy and Security Requirements	12

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

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

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

CONTRACTOR

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

Alameda County Sheriff's Office

CONTRACTOR BUSINESS ADDRESS

5325 Broder Boulevard

CITY

Dublin

STATE

CA

ZIP

94568

PRINTED NAME OF PERSON SIGNING

Keith Carson

TITLE


President of the Board of Supervisors

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

Approved as to Form

DONNA R. ZIEGLER, County Counsel

By: 
 Print Name: Keith J. Christanson

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER 21-76003-019	PURCHASING AUTHORITY NUMBER (If Applicable) DSH-4440
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STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Department of State Hospitals

CONTRACTING AGENCY ADDRESS

1215 O Street, MS-1

CITY

Sacramento

STATE

CA

ZIP

95814

PRINTED NAME OF PERSON SIGNING

Tiffany Ladd

TITLE

Section Manager, PCSS

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

W & I Code 4335.2 (f)

EXHIBIT A
SCOPE OF WORK

1. CONTRACTED PARTIES:

A. This Agreement is made and entered into by and between, the Department of State Hospitals (DSH) and Alameda County Sheriff's Office, hereafter referred to as Contractor, to provide DSH with relevant inmate medical records, including mental health and behavioral health records, and coordinate telehealth video interviews of defendants who have been committed to DSH as Incompetent to Stand Trial (IST) on a felony charge, and are awaiting admission to a DSH facility. Services are to be provided in accordance with Welfare and Institutions Code (WIC) section 4335.2 and are identified as IST Re-Evaluation services herein. IST Re-Evaluation Services performed by DSH will be for the purposes of re-evaluating competency status, psychotropic medication status, and assessment for placement in an alternative community based programs including but not limited to mental health diversion or community based restoration.

2. SERVICE LOCATIONS:

A. These services will be performed primarily through remote telehealth, video conferencing and other technologies facilitated by the county jail or other county locations housing felony IST defendants and in coordination with the DSH.

3. SERVICE HOURS:

A. The services shall be provided upon request during the hours of operation of the locations where services are required. DSH shall make every effort to assign work to be performed Monday through Friday, during core hours of 7:00 am to 7:00 pm.

4. PROJECT REPRESENTATIVES:

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

Contract Manager:

Department of State Hospitals:		Contractor	
Section/Unit: Forensic Services Division		Section/Unit: Alameda County Sheriff's Office, Santa Rita Jail	
Attention: Gilbert Jackson, SSM I		Attention: Michael Buckhout, Lieutenant	
Address: 1215 O Street, MS-9 Sacramento, CA 95814		Address: 5325 Broder Boulevard Dublin, CA 94568	
Phone: (916) 562-2810	Fax: (916) 653-2257	Phone: (925) 551-6828	Fax: N/A
Email: Gilbert.Jackson@dsh.ca.gov		Email: mbuckhout@acgov.org	

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

Department of State Hospitals:		Contractor: Insert Contractor's Name,	
Section/Unit: Forensic Services Division		Section/Unit: Alameda County Sheriff's Office, Santa Rita Jail	
Attention: Kecia Aldridge-Hall		Attention: Michael Buckhout, Lieutenant	
Address: 1215 O Street, MS-9 Sacramento, CA 95814		Address: 5325 Broder Boulevard Dublin, CA 94568	
Phone: (916) 562-3022	Fax: (916) 653-2257	Phone: (925) 551-6828	Fax: N/A
Email: Kecia.Aldridge@dsh.ca.gov		Email: mbuckhout@acgov.org	

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

5. SUMMARY OF WORK TO BE PERFORMED:

- A. The Contractor shall provide DSH with relevant and updated records of IST defendants who have been selected by DSH to participate in this program.
- B. The Contractor shall coordinate with DSH for the scheduling of interviews of those IST defendants selected to participate in primarily telehealth video interviews.
- C. The Contractor shall provide the necessary secure setting, technology, and security for these evaluations.
- D. The DSH makes no representation as to the minimum amount of services required under this Agreement.
- E. WIC section 4335.2, subdivision (c) provides, DSH shall have the authority and sole discretion to consider and conduct reevaluations, which will occur primarily through video telehealth.

6. CONTRACTOR RESPONSIBILITIES:

- A. The Contractor agrees to provide support services to DSH that shall include but not be limited to:
 - i. Securing and maintaining all necessary equipment such as a laptop or electronic tablets installed with appropriate software and having access to a secured internet connection required to facilitate telehealth video interviews with the DSH-assigned forensic evaluators. DSH shall reserve the right to approve the software application that will be utilized for telehealth video interviews of IST defendants.
 - ii. Coordinating with DSH forensic evaluators and other assigned staff in the scheduling of telehealth interviews within 72 hours of DSH contact.
 - iii. Providing DSH with all relevant and updated inmate medical records which include, but are not limited to, general medical records, mental health records, behavioral health records, and

custodial records, upon request by DSH and, at a maximum of 72 hours from the initial request.

- iv. Providing DSH with a contact to facilitate any DSH Evaluator requested collateral contacts with jail and/or medical staff.
- v. Providing the necessary logistics to facilitate the scheduled tele-health interview with the IST defendant. Logistics shall include, but not be limited to, escorting the IST defendant from the individual's cell to the interview room where the telehealth video interview will take place and providing security and monitoring of the IST defendant as necessary.
- vi. Providing DSH and evaluators with a contact for technical assistance, and an emergency contact to report any incidents that may arise during the interviews.
- vii. Providing evaluators with access and security for any in-person interviews, which may occur at the sole discretion of DSH.
- viii. If services are provided on DSH grounds, then the Contractor shall participate in any of the DSH workplace violence prevention, infection control-illness prevention, and workplace safety measures or programs as may be required by DSH. This responsibility includes compliance with infection control measures, use of Personal Protective Equipment (PPE) as prescribed by DSH, attending any and all related training or orientation to such measures or programs as may be required and scheduled by the DSH. DSH will provide the Contractor with electronic versions of the DSH's current Illness and Injury Prevention Plan (IIPP), Workplace Violence Prevention Plan (WVPP), DSH Code of Safe Practices, and other appropriate documents to support worksite safety and infection control.

7. THE DSH RESPONSIBILITIES:

- A. The DSH will provide the Contractor access to the DSH document management platform.
- B. The DSH will provide the Contractor one-time start-up funds, based on a flat rate set by DSH, for reimbursement of information technology support, equipment and software necessary to facilitate telehealth interviews such as laptops or tablets, internet and the associated licensing for necessary software in coordination with DSH.
- C. The DSH will reimburse Contractor for a portion of staff time utilized to facilitate video telehealth interviews for each telehealth evaluation conducted. Refusals will only be paid when Defendant declines to be interviewed to the evaluator, when the evaluator has the opportunity to speak to, see, and observe the defendant. Reimbursement will be based on a flat rate set by DSH.
- D. The DSH will coordinate with the Contractor regarding scheduling interviews, records requests, and collateral interview contacts for IST defendants.
- E. The DSH will provide Contractor with the most current approved IST invoice template. Contractor will be paid on a quarterly basis in arrears following the conclusion of the telehealth evaluations.

8. PERFORMANCE MEASURES:

A. Complete and Timely Provision of Services

- i. Expectations: Contractor is expected to provide all services which include, but are not limited to, providing DSH with collateral contacts, relevant records and scheduling interviews, in a timely manner—in accordance with timelines established by DSH.

9. AMENDMENTS:

- A. The parties reserve the right to amend this Agreement by extending the term for up to one (1) one-year renewal and to add funding sufficient for that period at the same rates. This right to amend is in addition to the right to amend for other reasons contained in this Agreement. Any amendments shall be in writing and signed by both parties, and be approved by the Department of General Services if such approval is required.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

1. INVOICING AND PAYMENT:

- A. Contractor shall submit all invoices not more frequently than monthly in arrears.
- B. Invoices should be sent no later than 90-days past the month the evaluation was conducted (e.g., April 2022 invoice packet must be submitted no later than July 1, 2022).
- C. The invoice shall identify all IST Defendants for whom DSH was provided with relevant updated inmate medical records and has completed an interview. Refusals will only be paid when Defendant declines to be interviewed to the evaluator, when the evaluator has the opportunity to speak to, see, and observe the defendant..
- D. 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.
- E. The DSH is not responsible for services performed by Contractor outside of this agreement, nor for services performed other than as outlined in Exhibit A, Scope of Work.
- F. 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
Attn: Accounts Payable
1215 O Street, MS-2
Sacramento, CA 95814
OR
E-Mail: DSHSac.AccountsPayable@dsh.ca.gov

- B. Contractor shall submit one original and one (1) copy of each invoice, unless emailed.
- C. Contractor must utilize the most current DSH approved IST invoice template provided by DSH. The Contractor shall type, not handwrite, each invoice. Step by step instructions to complete the invoice will be provided by DSH.
- D. DSH Administrators will provide the Contractor with the most current approved IST Invoice template and detailed Invoice instructions.
- E. 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.

- F. Contractor shall list and itemize in accordance with section 5, Budget Detail, all services or deliverables provided on each invoice.
- G. 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. First initial and last name of IST Defendant evaluated;
 - iv. Invoice total;
 - v. Written proof of DSH's approval as required by this Agreement for those services requiring pre-approval.

3. BUDGET CONTINGENCY CLAUSE:

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall no longer be in full force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any Fiscal Year (FY) is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to Contractor to reflect the reduced amount.
- C. If this Agreement overlaps Federal and State FYs, should funds not be appropriated by Congress or approved by the Legislature for the FY in which the Agreement was entered into, and/or any subsequent years covered under this Agreement, the State may exercise its option to cancel this Agreement.
- D. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by Congress or the Legislature which may affect the provisions or terms of funding of this Agreement in any manner.

4. PROMPT PAYMENT CLAUSE:

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

5. BUDGET DETAIL:

A. Contractor shall be compensated in accordance with the following:

Rate Sheet

Jail Support Cost	Rate
One-time start-up Cost Reimbursement per County (laptops/software etc.)	\$5,000.00
Sheriff Logistics and Coordination of re-evaluation (portion of jail staff time to provide support, escort, security and monitoring of the IST defendant)	\$500.00 Flat Rate Per IST Evaluation

- i. The portion of staff time utilized to facilitate telehelath interviews and evaluation of felony IST defendants in the jail will be compensated within the all-inclusive flat rate fee per each IST evaluation completed or refusal following articulated protocols referenced above.
 - ii. Each IST evaluation consist of a completed interview and updated records which include, but are not limited to, general medical records, mental health records, behavioral health records, and custodial records.
 - iii. If the IST Defendant declines to be interviewed to the evaluator, when the evaluator has the opportunity to speak to, see, and observe the defendant. the completed interview criteria will be met.
- B. The DSH does not expressly or by implication agree that the actual amount of work will correspond with any estimation provided in this Agreement, and reserves the right to omit portions of the estimated amount of work as may be deemed necessary or advisable by the DSH. The estimates listed above are a good faith estimate and are not a guarantee of business and is subject to change depending on fluctuation in IST defendant referrals. The amounts indicated above/below will be used solely for the purposes of encumbering funds. The DSH makes no guarantee, expressed or implied for actual amount of work to be performed. However, the rates contained in Exhibit B shall be binding for the term of this Agreement.
- C. At the sole discretion of the DSH and for the purposes of accounting, the DSH may adjust the total proposed expenditure for each fiscal year as needed to reflect work validated for completion. In no event will this change the contract price for the services actually rendered.
- D. Contractor must submit each invoice within ninety (90) days from the last day of the month in which services were rendered; unless Contractor has pre-approval, in writing, from the DSH. If Contractor fails to provide invoices within this timeframe, 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.

INVOICE TEMPLATE:

DSH IST Received Stamp	DSH IST Approved Stamp
IST INVOICE	
Month:	
Year:	
Is this invoice the original or a supplemental (additional) submission?	Original Supplemental (Additional)
FSD USE ONLY	
Invoice Number:	
Dispute Information:	
Disputed Date:	
Resolved Date:	
CONTRACT INFORMATION:	
Business/Contract Name	TO:
Contracted Street Address	California Department of State Hospitals Attn: Accounts Payable, MS-2 1215 O Street Sacramento, CA 95814 DSHSAC.AccountsPayable@dsh.ca.gov
Contracted City, State, Zip	
Contract Phone Number	
Current Contract Number	
STOP! Please read! The totals will appear once your contractor information is complete.	
Invoice Summary	
Evaluations:	
Total Invoice	\$ -
CONTRACTOR SIGNATURE:	DATE SIGNED:
Small Business Certification Number * (If applicable)	
<div style="border: 1px solid red; width: 200px; height: 15px; margin: 0 auto;"></div>	
Small Business Certification Stamp	Date to DSH Accounting Stamp

EXHIBIT C
GENERAL TERMS AND CONDITIONS

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

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

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

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

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

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

- a. The Government Code Chapter on Antitrust claims contains the following definitions:
 - 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
 - 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
- b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may

have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

- c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

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

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

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

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

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

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

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

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

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

1. SUBCONTRACTS:

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

2. PUBLICATIONS AND REPORTS:

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

3. PROGRESS REPORTS:

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

4. PRESENTATION:

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

5. DEPARTMENT OF STATE HOSPITALS STAFF:

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

6. CONFIDENTIALITY OF DATA AND DOCUMENTS:

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

LEGAL NOTICE

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

7. PROVISIONS RELATING TO DATA:

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

8. APPROVAL OF PRODUCT:

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

9. SUBSTITUTIONS:

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

10. NOTICE:

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

11. WAIVER:

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

12. GRATUITIES AND CONTINGENCY FEES:

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

13. INTEGRATION CLAUSE:

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

14. CAPTIONS:

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

15. PUBLIC HEARINGS:

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

16. FORCE MAJEURE:

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

17. LITIGATION:

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

18. DISPUTES:

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

19. EVALUATION OF CONTRACTOR'S PERFORMANCE:

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

20. AUDITS, INSPECTION AND ENFORCEMENT:

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

21. USE OF STATE FUNDS:

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

22. CANCELLATION PROVISIONS:

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

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

23. EMPLOYMENT PROVISIONS:

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

24. LIABILITY FOR LOSS AND DAMAGES:

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

25. SECURITY CLEARANCE/FINGERPRINTING/TUBERCULIN SKIN TESTING:

- A. DSH reserves the right to conduct fingerprinting, drug testing, and/or security clearance through the Department of Justice, Bureau of Criminal Identification and Information (BCII), prior to award and at any time during the term of the Agreement, in order to permit Contractor, their personnel, subcontractors, and other service providers through this Agreement access to State premises. DSH further reserves the right to terminate this Agreement should a threat to security be determined.
- B. In the event that the services required under this Agreement will be performed within a DSH facility, Contractors and their employees who are assigned to work with, near, or around patients shall be required to be examined and tested or medically evaluated by a licensed healthcare provider for TB in an infectious or contagious stage prior to the performance of contracted duties, and at least once a year thereafter (within 12 months of their initial or previous TB test under this contract), or more

often as directed by DSH. Contractors and their employees who have any contact (physical or nonphysical) with patients, shall be required to furnish to the DSH Contract Manager, at no cost to DSH, a documented Tuberculosis (TB) evaluation/test for TB infection (Tuberculin Skin Test (TST) or a blood test Interferon Gamma Release Assay (IGRA) completed within (30) thirty days of the start date of the services and be certified to be free of TB in an infectious or contagious stage by a licensed healthcare provider prior to assuming their contracted duties and annually thereafter.

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

26. PHYSICIAN OWNERSHIP AND REFERRAL ACT OF 1993:

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

27. AMENDMENTS:

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

Revised 11/17/2020

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

This Information Privacy and Security Requirements Exhibit (For Non-Health Insurance Portability and Accountability Act/Health Information Technology for Economic and Clinical Health (Non-HIPAA/HITECH Act Contracts) (hereinafter referred to as "this Exhibit") sets forth the information privacy and security requirements Contractor is obligated to follow with respect to all personal and confidential information (as defined herein) disclosed to Contractor, or collected, created, maintained, stored, transmitted or used by Contractor for or on behalf of the California Department of State Hospitals (hereinafter "DSH"), pursuant to Contractor's agreement with DSH. (Such personal and confidential information is referred to herein collectively as "DSH PCI".) DSH and Contractor desire to protect the privacy and provide for the security of DSH PCI pursuant to this Exhibit and in compliance with state and federal laws applicable to the DSH PCI.

- I. Order of Precedence: With respect to information privacy and security requirements for all DSH PCI, the terms and conditions of this Exhibit shall take precedence over any conflicting terms or conditions set forth in any other part of the agreement between Contractor and DSH, including Exhibit A (Scope of Work), all other exhibits and any other attachments, and shall prevail over any such conflicting terms or conditions.
- II. Effect on lower tier transactions: The terms of this Exhibit shall apply to all contracts, subcontracts, and subawards, and the information privacy and security requirements Contractor is obligated to follow with respect to DSH PCI disclosed to Contractor, or collected, created, maintained, stored, transmitted or used by Contractor for or on behalf of DSH, pursuant to Contractor's agreement with DSH. When applicable the Contractor shall incorporate the relevant provisions of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.
- III. Definitions: For purposes of the agreement between Contractor and DSH, including this Exhibit, the following definitions shall apply:
 - A. Breach: "Breach" means:
 1. the unauthorized acquisition, access, use, or disclosure of DSH PCI in a manner which compromises the security, confidentiality or integrity of the information; or
 2. the same as the definition of "breach of the security of the system" set forth in California Civil Code section 1798.29(f) (2021).
 - B. Confidential Information: "Confidential information" means information that:
 1. does not meet the definition of "public records" set forth in California Government Code section 6252(e) (2021), or is exempt from disclosure under any of the provisions of Section 6250, et seq. of the California Government Code or any other applicable state or federal laws; or

2. is contained in documents, files, folders, books or records that are clearly labeled, marked or designated with the word "confidential" by DSH.
- C. Disclosure: "Disclosure" means the release, transfer, provision of, access to, or divulging in any manner of information outside the entity holding the information.
- D. PCI: "PCI" means "personal information" and "confidential information" collectively (as these terms are defined herein).
- E. Personal Information: "Personal information" means information, in any medium (paper, electronic, oral) that:
1. directly or indirectly collectively identifies or uniquely describes an individual; or
 2. could be used in combination with other information to indirectly identify or uniquely describe an individual, or link an individual to the other information; or
 3. meets the definition of "personal information" set forth in California Civil Code section 1798.3, subdivision (a) (2021); or
 4. is one of the data elements set forth in California Civil Code section 1798.29, subdivision (g)(1) or (g)(2) (2021); or
 5. meets the definition of "medical information" set forth in either California Civil Code section 1798.29, subdivision (h)(2) (2021), or California Civil Code section 56.05, subdivision (j) (2021); or
 6. meets the definition of "health insurance information" set forth in California Civil Code section 1798.29, subdivision (h)(3) (2021); or
 7. is protected from disclosure under applicable state or federal law.
- F. Security Incident: "Security Incident" means:
1. an attempted breach; or
 2. the attempted or successful unauthorized access or disclosure, modification or destruction of DSH PCI, in violation of any state or federal law or in a manner not permitted under the agreement between Contractor and DSH, including this Exhibit; or
 3. the attempted or successful modification or destruction of, or interference with, Contractor's system operations in an information technology system, that negatively impacts the confidentiality, availability or integrity of DSH PCI; or
 4. any event that is reasonably believed to have compromised the confidentiality, integrity, or availability of an information asset, system, process, data storage, or transmission. Furthermore, an information security incident may also include an event that constitutes

a violation or imminent threat of violation of information security policies or procedures, including acceptable use policies.

G. Use: "Use" means the sharing, employment, application, utilization, examination, or analysis of information.

- IV. Disclosure Restrictions: The Contractor and its employees, agents, and subcontractors shall protect from unauthorized disclosure any DSH PCI. The Contractor shall not disclose, except as otherwise specifically permitted by the agreement between Contractor and DSH (including this Exhibit), any DSH PCI to anyone other than DSH personnel or programs without prior written authorization from the DSH Program Contract Manager, except if disclosure is required by State or Federal law.
- V. 42 C.F.R. Part 2 compliance: DSH shall receive patient identifying substance use disorder treatment information for program evaluation and auditing purposes. In accordance with 42 C.F.R. part 2.53, DSH agrees to:
- (i) Maintain and destroy patient identifying information and records covered by 42 C.F.R. Part 2 in a manner consistent with the policies and procedures established under 42 C.F.R. part 2.16;
 - (ii) Retain records in compliance with applicable federal, state, and local record retention laws; and
 - (iii) Comply with the limitations on disclosure and use in 42 C.F.R. part 2.53(d).
- VI. Use Restrictions: The Contractor and its employees, agents, and subcontractors shall not use any DSH PCI for any purpose other than performing the Contractor's obligations under its agreement with DSH. DSH and its employees, agents, and subcontractors shall not use any data received from contractor for any purpose other than noted in this agreement, Welfare and Institutions Code section 4335.2.
- VII. Research compliance: DSH is a covered entity under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). DSH may receive protected health information and patient identifying substance use disorder treatment information for research purposes so long as disclosure is consistent with federal and state laws. Without limiting the generality of the foregoing, in accordance with 42 C.F.R. part 2.52(a) and 45 C.F.R. part 164.512(i), Contractor shall only disclose the data to DSH for research purposes after DSH obtains approval from the State of California's Institutional Review Board, the California Health and Human Services' Committee for the Protection of Human Subjects and furnishes documentation to Contractor. DSH shall follow all of its internal policies and procedures for obtaining approval for research using data reported by contractor. DSH agrees to comply with HIPAA and 42 C.F.R. Part 2 regarding all requirements including retention and destruction.
- VIII. Safeguards: The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the privacy, confidentiality, security, integrity, and availability of DSH PCI, including electronic or computerized DSH PCI. At each location where DSH PCI exists under Contractor's control, the Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities in performing its agreement with DSH, including this Exhibit, and which incorporates the requirements of Section VII, Security, below. Contractor shall provide DSH with Contractor's current and updated policies within five (5) business days of a request by DSH for the policies.

- IX. Security: The Contractor shall take any and all steps reasonably necessary to ensure the continuous security of all computerized data systems containing DSH PCI.
- X. Security Officer: At each place where DSH PCI is located, the Contractor shall designate a Security Officer to oversee its compliance with this Exhibit and to communicate with DSH on matters concerning this Exhibit.
- XI. Training: The Contractor shall provide training on its obligations under this Exhibit, at its own expense, to all of its employees who assist in the performance of Contractor's obligations under Contractor's agreement with DSH, including this Exhibit, or otherwise use or disclose DSH PCI.
- A. The Contractor shall require each employee who receives training to certify, either in hard copy or electronic form, the date on which the training was completed.
- B. The Contractor shall retain each employee's certifications for DSH inspection for a period of three years following contract termination or completion.
- C. Contractor shall provide DSH with its employee's certifications within five (5) business days of a request by DSH for the employee's certifications.
- XII. Employee Discipline: Contractor shall impose discipline that it deems appropriate (in its sole discretion) on such employees and other Contractor workforce members under Contractor's direct control who intentionally or negligently violate any provisions of this Exhibit.
- XIII. Breach and Security Incident Responsibilities:
- A. Notification to DSH of Breach or Security Incident: The Contractor shall notify DSH **immediately by telephone call plus email or fax** upon the discovery of a breach (as defined in this Exhibit), **and within twenty-four (24) hours by email or fax** of the discovery of any security incident (as defined in this Exhibit), unless a law enforcement agency determines that the notification will impede a criminal investigation, in which case the notification required by this section shall be made to DSH immediately after the law enforcement agency determines that such notification will not compromise the investigation. Notification shall be provided to the DSH Program Contract Manager, the DSH Privacy Officer and the DSH Chief Information Security Officer, using the contact information listed in Section XI(F), below. If the breach or security incident is discovered after business hours or on a weekend or holiday and involves DSH PCI in electronic or computerized form, notification to DSH shall be provided by calling the DSH Information Security Office at the telephone numbers listed in Section XI(F), below. For purposes of this Section, breaches and security incidents shall be treated as discovered by Contractor as of the first day on which such breach or security incident is known to the Contractor, or, by exercising reasonable diligence would have been known to the Contractor. Contractor shall be deemed to have knowledge of a breach if such breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is an employee or agent of the Contractor.

Contractor shall take:

1. prompt corrective action to mitigate any risks or damages involved with the breach or security incident and to protect the operating environment; and
 2. any action pertaining to a breach required by applicable federal and state laws, including, specifically, California Civil Code sections 1798.29 and 1798.82 (2021).
- B. Investigation of Breach and Security Incidents: The Contractor shall immediately investigate such breach or security incident. As soon as the information is known and subject to the legitimate needs of law enforcement, Contractor shall inform the DSH Program Contract Manager, the DSH Privacy Officer, and the DSH Chief Information Security Officer of:
1. what data elements were involved, and the extent of the data disclosure or access involved in the breach, including, specifically, the number of individuals whose personal information was breached; and
 2. a description of the unauthorized persons known or reasonably believed to have improperly used the DSH PCI and/or a description of the unauthorized persons known or reasonably believed to have improperly accessed or acquired the DSH PCI, or to whom it is known or reasonably believed to have had the DSH PCI improperly disclosed to them; and
 3. a description of where the DSH PCI is believed to have been improperly used or disclosed; and
 4. a description of the probable and proximate causes of the breach or security incident; and
 5. whether Civil Code sections 1798.29 and 1798.82 (2021) or any other federal or state laws requiring individual notifications of breaches have been triggered.
- C. Written Report: The Contractor shall provide a written report of the investigation to the DSH Program Contract Manager, the DSH Privacy Officer, and the DSH Chief Information Security Officer as soon as practicable after the discovery of the breach or security incident. The report shall include, but not be limited to, the information specified above, as well as a complete, detailed corrective action plan, including information on measures that were taken to halt and/or contain the breach or security incident, and measures to be taken to prevent the recurrence or further disclosure of data regarding such breach or security incident.
- D. Notification to Individuals: If notification to individuals whose information was breached is required under state or federal law, and regardless of whether Contractor is considered only a custodian and/or non-owner of the DSH PCI, Contractor shall, at its sole expense, and at the sole election of DSH, either:

1. make notification to the individuals affected by the breach (including substitute notification), pursuant to the content and timeliness provisions of such applicable state or federal breach notice laws. Contractor shall inform the DSH Privacy Officer of the time, manner and content of any such notifications, prior to the transmission of such notifications to the individuals; or
 2. cooperate with and assist DSH in its notification (including substitute notification) to the individuals affected by the breach.
- E. Submission of Sample Notification to Attorney General: If notification to more than 500 individuals is required pursuant to California Civil Code section 1798.29 or 1798.82 (2021), and regardless of whether Contractor is considered only a custodian and/or non-owner of the DSH PCI, Contractor shall, at its sole expense, and at the sole election of DSH, either:
1. electronically submit a single sample copy of the security breach notification, excluding any personally identifiable information, to the Attorney General pursuant to the format, content and timeliness provisions of Section 1798.29, subdivision (e), or 1798.82, subdivision (f) (2021). Contractor shall inform the DSH Privacy Officer of the time, manner and content of any such submissions, prior to the transmission of such submissions to the Attorney General; or
 2. cooperate with and assist DSH in its submission of a sample copy of the notification to the Attorney General.
- F. DSH Contact Information: To direct communications to the above referenced DSH staff, the Contractor shall initiate contact as indicated herein. DSH reserves the right to make changes to the contact information below by verbal or written notice to the Contractor. Said changes shall not require an amendment to this Exhibit or the agreement to which it is incorporated.

Contract Managers	Chief Privacy Officer	Chief Information Security Officer
See Exhibit A - Scope of Work for contact information	Chief Privacy Officer Office of Legal Services 1215 O Street, MS-5 Sacramento, CA 95814 Email: privacy.officer@dsh.ca.gov and dshsaclegalprivacy@dsh.ca.gov Telephone: 916-562-3721	Chief Information Security Officer Information Security Office 1215 O Street, MS-4 Sacramento, CA 95814 Email: iso@dsh.ca.gov and security@dsh.ca.gov Telephone: 916-654-4218
	Chief Privacy Officer Michael Buckhout, Lieutenant	Chief Information Security Officer Michael Buckhout, Lieutenant

	Alameda County Sheriff's Office 5325 Broder Boulevard Dublin, CA 94568 Email: mbuckhout@acgov.org Telephone: 925-551-(4)6828	Alameda County Sheriff's Office 5325 Broder Boulevard Dublin, CA 94568 Email: mbuckhout@acgov.org Telephone: 925-551-(4)6828
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- XIV. Documentation of Disclosures for Requests for Accounting: Contractor shall document and make available to DSH or (at the direction of DSH) to an Individual such disclosures of DSH PCI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of personal information as required by Civil Code section 1798.25 (2021), or any applicable state or federal law.

- XV. Requests for DSH PCI by Third Parties: The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DSH Program Contract Manager all requests for disclosure of any DSH PCI requested by third parties to the agreement between Contractor and DSH (except from an Individual for an accounting of disclosures of the individual's personal information pursuant to applicable state or federal law), unless prohibited from doing so by applicable state or federal law.

- XVI. Audits, Inspection and Enforcement: DSH may inspect the facilities, systems, books and records of Contractor to monitor compliance with this Exhibit. Contractor shall promptly remedy any violation of any provision of this Exhibit and shall certify the same to the DSH Program Contract Manager in writing.

- XVII. Return or Destruction of DSH PCI on Expiration or Termination: Upon expiration or termination of the agreement between Contractor and DSH for any reason, Contractor shall securely return or destroy the DSH PCI. If return or destruction is not feasible, Contractor shall provide a written explanation to the DSH Program Contract Manager, the DSH Privacy Officer and the DSH Chief Information Security Officer, using the contact information listed in Section XI(F), above.
 - A. Retention Required by Law: If required by state or federal law, Contractor may retain, after expiration or termination, DSH PCI for the time specified as necessary to comply with the law.

 - B. Obligations Continue Until Return or Destruction: Contractor's obligations under this Exhibit shall continue until Contractor destroys the DSH PCI or returns the DSH PCI to DSH; provided however, that on expiration or termination of the agreement between Contractor and DSH, Contractor shall not further use or disclose the DSH PCI except as required by state or federal law.

 - C. Notification of Election to Destroy DSH PCI: If Contractor elects to destroy the DSH PCI, Contractor shall certify in writing within 30 days of the expiration or termination of the agreement to the DSH Program Contract Manager, the DSH Privacy Officer and the DSH

Chief Information Security Officer, using the contact information listed in Section XI(F), above, that the DSH PCI has been securely destroyed. The notice shall include the date and type of destruction method used.

- XVIII. Amendment: The parties acknowledge that federal and state laws regarding information security and privacy rapidly evolves and that amendment of this Exhibit may be required to provide for procedures to ensure compliance with such laws. The parties specifically agree to take such action as is necessary to implement new standards and requirements imposed by regulations and other applicable laws relating to the security or privacy of DSH PCI. The parties agree to promptly enter into negotiations concerning an amendment to this Exhibit consistent with new standards and requirements imposed by applicable laws and regulations.
- XIX. Assistance in Litigation or Administrative Proceedings: Contractor shall make itself and any subcontractors, workforce employees or agents assisting Contractor in the performance of its obligations under the agreement between Contractor and DSH, available to DSH at no cost to DSH to testify as witnesses, in the event of litigation or administrative proceedings being commenced against DSH, its director, officers or employees based upon claimed violation of laws relating to security and privacy, which involves inactions or actions by the Contractor, except where Contractor or its subcontractor, workforce employee or agent is a named adverse party.
- XX. No Third-Party Beneficiaries: Nothing express or implied in the terms and conditions of this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than DSH or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- XXI. Interpretation: The terms and conditions in this Exhibit shall be interpreted as broadly as necessary to implement and comply with regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of this Exhibit shall be resolved in favor of a meaning that complies and is consistent with federal and state laws and regulations.
- XXII. Survival: If Contractor does not return or destroy the DSH PCI upon the expiration or termination of the Agreement, the respective rights and obligations of Contractor under Sections VI, VII and XI of this Exhibit shall survive the completion or termination of the agreement between Contractor and DSH.

Attachment 1
Contractor Data Security Standards

Contractor is exempt from all Contractor Data Security Standards set forth in Exhibit F, Attachment 1 as it is not applicable to this agreement.

1. **Contractor is exempt from all Contractor Data Security Standards set forth in Exhibit F, Attachment 1 as it is not applicable to this agreement. General Security Controls**
 - A. **Confidentiality Statement.** All persons that will be working with DSH PCI must sign a confidentiality statement. The statement must include at a minimum, General Use, Security and Privacy safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to DSH PCI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DSH inspection for a period of three (3) years following contract termination.
 - B. **Background check.** Before a member of the Contractor's workforce may access DSH PCI, Contractor must conduct a thorough background check of that worker and evaluate the results to assure that there is no indication that the worker may present a risk for theft of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.
 - C. **Workstation/Laptop encryption.** All workstations and laptops that process and/or store DSH PCI must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. The encryption solution must be full disk unless approved by the DSH Information Security Office.
 - D. **Server Security.** Servers containing unencrypted DSH PCI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
 - E. **Minimum Necessary.** Only the minimum necessary amount of DSH PCI required to perform necessary business functions may be copied, downloaded, or exported.
 - F. **Removable media devices.** All electronic files that contain DSH PCI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, smart devices tapes etc.). PCI must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher
 - G. **Antivirus software.** All workstations, laptops and other systems that process and/or store DSH PCI must install and actively use a comprehensive anti-virus software solution with automatic updates scheduled at least daily.

- H. **Patch Management.** All workstations, laptops and other systems that process and/or store DSH PCI must have operating system and application security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- I. **User IDs and Password Controls.** All users must be issued a unique user name for accessing DSH PCI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Must be at least eight characters. Must be a non-dictionary word. Must not be stored in readable format on the computer. Must be changed every 60 days. Must be changed if revealed or compromised. Must be composed of characters from at least three of the following four groups from the standard keyboard:
- Upper case letters (A-Z)
 - Lower case letters (a-z)
 - Arabic numerals (0-9)
 - Non-alphanumeric characters (punctuation symbols)
- J. **Data Sanitization.** All DSH PCI must be sanitized using NIST Special Publication 800-88 standard methods for data sanitization when the DSH PCI is no longer needed.

2. System Security Controls

- A. **System Timeout.** The system must provide an automatic timeout, requiring reauthentication of the user session after no more than 20 minutes of inactivity.
- B. **Warning Banners.** All systems containing DSH PCI must display a warning banner each time a user attempts access, stating that data is confidential, systems are logged, and system use is for business purposes only. User must be directed to log off the system if they do not agree with these requirements.
- C. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DSH PCI, or which alters DSH PCI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. This logging must be included for all user privilege levels including, but not limited to, systems administrators. If DSH PCI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- D. **Access Controls.** The system must use role based access controls for all user authentications, enforcing the principle of least privilege.
- E. **Transmission encryption.** All data transmissions of DSH PCI outside the contractor's secure internal network must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. Encryption can be end

to end at the network level, or the data files containing DSH PCI can be encrypted. This requirement pertains to any type of DSH PCI in motion such as website access, file transfer, and E-Mail.

- F. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting DSH PCI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3. Audit Controls

- A. **System Security Review.** All systems processing and/or storing DSH PCI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews shall include vulnerability scanning tools.
- B. **Log Reviews.** All systems processing and/or storing DSH PCI must have a routine procedure in place to review system logs for unauthorized access.
- C. **Change Control.** All systems processing and/or storing DSH PCI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4. Business Continuity / Disaster Recovery Controls

- A. **Disaster Recovery.** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic DSH PCI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this agreement for more than 24 hours.
- B. **Data Backup Plan.** Contractor must have established documented procedures to securely backup DSH PCI to maintain retrievable exact copies of DSH PCI. The backups shall be encrypted. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and the amount of time to restore DSH PCI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DSH data.

5. Paper Document Controls

- A. **Supervision of Data.** DSH PCI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. DSH PCI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- B. **Escorting Visitors.** Visitors to areas where DSH PCI is contained shall be escorted and DSH PHI shall be kept out of sight while visitors are in the area.

- C. **Confidential Destruction.** DSH PCI must be disposed of through confidential means, using NIST Special Publication 800-88 standard methods for data sanitization when the DSH PSCI is no longer needed.
- D. **Removal of Data.** DSH PCI must not be removed from the premises of the Contractor except with express written permission of DSH.
- E. **Faxing.** Faxes containing DSH PCI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending.
- F. **Mailing.** DSH PCI shall only be mailed using secure methods. Large volume mailings of DSH PHI shall be by a secure, bonded courier with signature required on receipt. Disks and other transportable media sent through the mail must be encrypted with a DSH approved solution, such as a solution using a vendor product specified on the CALIFORNIA STRATEGIC SOURCING INITIATIVE.

Revised 12/21/21