

# FULLY EXECUTED

STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
STD 213 (Rev 06/03)

AGREEMENT NUMBER <b>18-10011-000</b>
REGISTRATION NUMBER

- This Agreement is entered into between the State Agency and the Contractor named below:  
STATE AGENCY'S NAME  
**Department of State Hospitals – Atascadero**  
CONTRACTOR'S NAME  
**San Luis Obispo Community College District**
- The term of this Agreement is: **July 1, 2018 through June 30, 2020**
- The maximum amount of this Agreement is: **(\$ 1,248,446.76)**  
**One Million Two Hundred Forty-Eight Thousand Four Hundred Forty-Six Dollars and Seventy-Six Cents**
- 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.

Exhibit A – Scope of Work	7 page(s)
Exhibit A1 – Agreement for Psychiatric Training Services	1 page(s)
Exhibit B – Budget Detail and Payment Provisions	4 page(s)
Exhibit C – General Terms and Conditions*	GTC 04/2017
Exhibit D – Special Terms and Conditions	9 page(s)
Exhibit E – Confidentiality and Information Security Provisions	7 page(s)
Exhibit F – Insurance Requirements	4 page(s)

\* 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 <http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

<b>CONTRACTOR</b>		<p>California Department of General Services Use Only</p> <div style="border: 2px solid black; padding: 10px; text-align: center;"><p><b>APPROVED</b></p><p><b>JUN 19 2018</b></p><p>OFFICE OF LEGAL SERVICES DEPT. OF GENERAL SERVICES</p></div> <p><i>[Signature]</i></p> <p><input type="checkbox"/> Exempt per:</p>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) <b>San Luis Obispo Community College District</b>		
BY (Authorized Signature) <i>[Signature]</i>	DATE SIGNED (Do not type) <b>5/10/18</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Dan Troy, Vice President of Administrative Services</b>		
ADDRESS <b>P.O. Box 8106, San Luis Obispo, CA 93406-8106</b>		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME <b>Department of State Hospitals</b>		
BY (Authorized Signature) <i>[Signature]</i>	DATE SIGNED (Do not type) <b>6.1.18</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Dawn DiBartolo, Chief, Acquisition and Business Services Office</b>		
ADDRESS <b>1600 9th Street, Room 101, Sacramento, CA 95814</b>		

**DSH USE ONLY**

State Master     Contractor     Contract Manager     Accounting     State Controller

***This page is intentionally left blank***

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

**1. CONTRACTED PARTIES:**

A. San Luis Obispo Community College District, hereafter referred to as Contractor, agrees to provide a Psychiatric Technician program that educates individuals to be licensed Psychiatric Technicians (as defined in Section 6) to the Department of State Hospitals (DSH) – Atascadero pursuant to the terms and conditions of the Agreement.

**2. SERVICE LOCATIONS:**

A. The services shall be performed for the Department of State Hospitals at 10333 El Camino Real, Atascadero, CA 93422. Instruction may also take place at various clinical sites within San Luis Obispo County.

**3. SERVICE HOURS:**

A. The services shall be provided Monday through Friday, between the hours of 6:30 AM and 2:30 PM, excluding state observed holidays.

**4. PROJECT REPRESENTATIVES:**

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

*Contract Manager:*

Department of State Hospitals:		Contractor: San Luis Obispo Community College District	
Section/Unit: Central Nursing Services		Section/Unit: Nursing & Allied Health	
Attention:	Liz Souza Nurse Administrator	Attention:	Marcia Scott Director
Address:	P.O. Box 7001 Atascadero, CA 93423-7001	Address:	P.O. Box 8106 San Luis Obispo, CA 93406-8106
Phone:	805-468-2111	Fax:	805-468-3080
Phone:	805-468-2111	Fax:	805-468-3080
Email:	Liz.Souza@dsh.ca.gov	Email:	mscott@cuesta.edu

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

Department of State Hospitals:		Contractor: San Luis Obispo Community College District	
Section/Unit: Psychiatric Technician Program		Section/Unit: Nursing & Allied Health	
Attention:	Lindsay Byers, SRN Program Director	Attention:	Marcia Scott Director
Address:	P.O. Box 7001 Atascadero, CA 93423-7001	Address:	P.O. Box 8106 San Luis Obispo, CA 93406-8106

Phone: 805-468-2166	Fax: 805-468-2285	Phone: 805-468-2166	Fax: 805-468-2285
Email: Lindsay.byers@dsh.ca.gov		Email: mscott@cuesta.edu	

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 in conjunction with DSH shall offer approved educational courses to meet the needs of the Psychiatric Technician Program at DSH.

**6. CONTRACTOR RESPONSIBILITIES:**

- A. Contractor shall include course sections offered under this Agreement in its published college course schedule. For sections added after publication, the Contractor shall ensure such sections are appropriately advertised to the general public.
- B. Contractor shall provide the instructors with an orientation, faculty handbook, California Code of Regulations, title 5 course outlines, curriculum materials, testing and grading procedures, and any other materials and services needed to offer a credit course. The Contractor shall be responsible for maintenance and use of approved college curriculum that is in compliance with the Board of Vocational Nurses and Psychiatric Technicians requirements.
- C. Contractor shall ensure that instructors in the program meet the minimum qualifications for instruction, and approve the selection of and continuation of such instructors based upon a summary of instructor evaluation history conducted by DSH, student evaluations, and evaluations that may include those conducted by the Contractor's administration.
- D. Contractor shall ensure that course offerings to be reported to the State for apportionment funding meet all appropriate requirements under California Code of Regulations, title 5, and State student attendance accounting and audit accountability requirements.
- E. Contractor and DSH shall mutually advise one another of any substantive revisions to existing courses offered as part of this Agreement, initiation of new courses, or any other changes to courses or programs in a timely manner.
- F. Contractor shall pay DSH for the cost of DSH employees who provide direct instruction under this Agreement. Such payments are to compensate DSH for the time DSH employees spend providing direct instruction and for materials and other costs incurred by DSH for activities offered under this Agreement.
- G. Contractor shall make available career and academic counseling to all registered students and shall grant appropriate college credit for instruction. Such services shall be provided as needed at DSH's facility. Determination of the need for career and academic counseling at DSH's facility shall be mutually agreed upon by the Contractor and DSH.

- H. Contractor shall assess each psychiatric technician students' preparedness prior to enrollment. Such assessment shall be in compliance with State law and any internal prerequisites mutually developed by DSH and the Contractor.
- I. Contractor shall certify that it does not receive full compensation for direct education costs of any course within the scope of this Agreement from any public or private agency, individual or group.
- J. Contractor represents and warrants to DSH that the Contractor and Contractor's employees, at the Contractor's sole cost and expense, shall have and maintain, at all times during the term of this Agreement, all accreditations required for the Contractor to perform the services under this Agreement.
- K. Contractor agrees to meet with DSH prior to the start of each fiscal year to discuss the educational program for the coming year. The fiscal year shall be defined as July 1 through June 30 of the following year. For the purposes of this section the Contractor and DSH shall meet no later than May 1, 2018 for fiscal year 2018-2019. Topics of discussion shall include, but will not be limited to new or revised courses, anticipated attendance levels, contracted attendance growth compared to previous years, and consideration for attendance growth level contingent upon growth factor assigned to the Contractor by the State. Finalization of growth discussions between both parties shall occur within thirty (30) days of the adoption of the State budget that provides funding for California Community Colleges and the assignment of the Contractor's actual growth factor for the fiscal year.
- L. Contractor shall cover students enrolled in the Psychiatric Technician program during instruction and clinical training for workers compensation. The Contractor shall provide workers compensation for these student trainees during the time that they are an intern at DSH.
- M. Contractor shall:
  - i. Be responsible for protecting the patient health information to which they have access during the performance of their duties.
  - ii. Acknowledge the civil and/or criminal penalties and potential consequences of information privacy infractions. The infractions may include both the release of health information under false pretenses, and releasing information with the intent to sell or cause harm are all grounds for criminal penalties.
  - iii. Agree that both students and faculty will access, use, or modify protected health information only for the purpose of performing their assigned duties. They are not to:
    - 1. Access or use protected health information for personal interest or advantage.
    - 2. Show, discuss, or disclose protected health information to or with anyone who does not have legal authority.
    - 3. Remove protected health information from the work area without proper authorization.
    - 4. Share passwords with anyone or post passwords in an area accessible to unauthorized persons.
    - 5. Store protected health information in an area that is not physically secure from access by unauthorized persons.
    - 6. Dispose of protected health information in wastebaskets or recycle bins. Appropriate methods of destruction would be de-identification, shredding, and placing in a secure shredding container.

7. Disclose protected health information for case studies, statistical reviews, etc., without first de-identifying the information (removing unique identifiers, such as name, AT, age, etc.).
- N. Contractor shall participate in any job-related training provided or required by DSH.
  - O. Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement shall not engage in, and shall report all instances of, any activity that would constitute "Workplace Violence" as defined in the applicable DSH Administrative Letter, which can be provided upon request. Failure to comply with this provision by Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement shall be deemed a material breach of this Agreement.
  - P. If services are provided on DSH grounds, Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement must present a valid picture identification (e.g., driver license or identification card issued by a state Department of Motor Vehicle, military card, etc.; company badges are not valid) in order to be admitted into secured areas.
  - Q. If services are provided on DSH grounds, Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement shall not take pictures or video with a camera or phone anywhere on DSH grounds without the written consent of the Executive Director or designee. If any Contractor is caught taking photos or video without prior authorization, their phone or camera will be subject to search and further action will be taken by DSH Hospital police.
  - R. If services are provided on DSH grounds, Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement shall not engage in conversation with DSH patients unless providing direct services to DSH patients conforming to the terms and conditions of their contract.
  - S. If services are provided on DSH grounds, then Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement shall adhere to the dress code of the location where work is being performed. These dress codes may include limitations on the length, color, and material of clothing, or anything else required by that location. Contractor and subcontractors shall obtain a current copy of each location's dress code prior to the performance of any work. Contractor and subcontractors may be refused entry into the DSH grounds if their clothing is found to violate the established dress codes. The DSH retains the right to change its dress codes at any time.
  - T. If services are provided on DSH grounds, Contractor understands and agrees that the DSH reserves the right to limit or restrict the equipment, including but not limited to, tools and communication devices that the Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement may bring on grounds. In no way shall the DSH be held liable or accountable for tools misplaced or left behind. Upon notice by the DSH, Contractor shall comply with all such limitations and restrictions.
  - U. If services are provided on DSH grounds, Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement shall not possess or use any tobacco products, (including smokeless tobacco) on the DSH grounds (Welfare and Institutions Code section 4138).
  - V. If services are provided on DSH grounds, then Contractor shall participate in any of the DSH safety measures or programs as may be required by the DSH. This responsibility includes

attending any and all related training or orientation to such measures or programs as may be required and scheduled by the DSH.

- W. Contractor and its subcontractors shall procure and keep in full force and effect during the term of this Agreement all permits, registrations and licenses necessary to accomplish the work specified in this Agreement, and shall give all notices necessary and incident to the lawful prosecution of the work. Contractor shall provide proof of any such license(s) permits(s), and certificate(s) upon request by 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.
- X. Contractor shall provide services as outlined in this Agreement. Contractor shall be responsible to fulfill the requirements of the Agreement and shall incur expenses at its own risk and invest sufficient amount of time and capital to fulfill the obligations as contained herein.
- Y. Contractor and its subcontractors shall keep informed of, observe, comply with, and cause all of its agents and employees to observe and to comply with all prevailing Federal, State, and local laws, and rules and regulations made pursuant to said Federal, State, and local laws, which in any way affect the conduct of the work of this Agreement. If any conflict arises between provisions of the plans and specifications and any such law above referred to, then the Contractor shall immediately notify the state in writing.
- Z. The DSH may terminate the Agreement pursuant to section 7 of Exhibit C if the Contractor or its subcontractors fails to comply with a federal, state or local law and the noncompliance, based on the facts and circumstances, would constitute a material breach of this Agreement under California law.
- AA. It is expressly understood and agreed that no personal liability whatsoever attached to any member of the Contractor's Board of Trustees, or to any of the officers or employees of the Contractor thereof by virtue of this Agreement.
- BB. If services are provided on DSH grounds, each person performing services under this Agreement may be issued a Personal Duress Alarm (PDA) tag and charger. These devices are issued for the safety and security of all contractors. It will be the responsibility of each person to ensure they wear the device during each visit and to maintain the battery by charging it when necessary. Each person performing services under this Agreement may be required, at the discretion of DSH, to be oriented to the use of PDAS, including but not limited to videos, classroom time, etc.
  - i. Upon the expiration or termination of this Agreement, Contractor shall ensure that each person performing services under this Agreement return all of their PDA tags and chargers to the appropriate DSH Police Department. If a PDA tag and charger is not returned to DSH, Contractor will be responsible for the current replacement cost of the PDA tag (at the rates of \$66.22 per tag, and \$14.62 per charger). Contractor will be billed accordingly for any PDA tags and chargers that are not returned. Failure to reimburse cost by Contractor will result in DSH withholding the cost of unreturned PDA tags and/or chargers against any outstanding invoices. If all invoices have been paid, DSH will issue an invoice to Contractor for payment. The DSH Contract Manager shall ensure all PDA tags and chargers are returned to the appropriate DSH Police Department prior to signing off final invoice for payment.

## 7. THE DSH RESPONSIBILITIES:

- A. DSH shall provide a contact person (coordinator) to work with the Contractor, for which the Contractor shall reimburse DSH.
- B. DSH shall:
- i. Provide instruction on the following curriculum:
    1. Psychiatric Technician (PSYT) 207 – Nursing Science: consisting of Nursing Fundamentals, Caring for the Elderly, Medical and Surgical Nursing, Anatomy and Physiology, Communicable Diseases, Pharmacology, and Nutrition;
    2. PSYT 208 – Developmental Disabilities: consisting of Normal Growth and Development, Developmental Disabilities, Caring for the Disabled Person, Genetics, Medication Administration, Use of Adaptive Equipment, Behavior Management Techniques, Pharmacology and Sign Language;
    3. PSYT 209 – Psychiatric Nursing: consisting of Communication Skills and Team Building, Group Therapy and Self-Discovery, Mental and Personality Disorders, Pharmacology, Medication Administration, and Forensic Nursing;
    4. PSYT 110 – New Employee Orientation: consisting of Working in a Forensic Facility, Cardiopulmonary Resuscitation (CPR) and First Aid, Critical Thinking and Study Skills, Crisis Intervention, and Therapeutic Strategies and Interventions.
  - ii. Provide the Contractor with advance notice of individual course beginning and ending dates.
  - iii. Provide facilities for instructional activities free of charge.
  - iv. Provide the Contractor with documentation satisfying minimum qualification requirements for the instructor's salaries and benefits costs and provide equipment, materials, and day-to-day management support.
  - v. Provide office space, equipment, and secretarial and administrative staff.
  - vi. Ensure minimum credit course content, instructional design, testing of students, and terminal performance rating to meet Board of Vocational Nurse and Psychiatric Technician (BVNPT) standards and the Contractor's curriculum standards.
  - vii. Ensure open enrollment and select candidates that meet all course prerequisites developed by the Contractor and DSH.
  - viii. Not exceed a cap of 30 students per course as outlined in Exhibit B – Budget Detail and Payment Provisions, Section 5.J.
  - ix. Provide psychiatric technician licensing application. The Contractor shall provide certification of proficiency.
  - x. Provide instruction to and assess competency of all participating students in regards to the rules, regulations, policies, and procedures of DSH, including, the privacy and security of patient health information.
  - xi. Provide training on privacy and confidentiality during New Employee Orientation, work site orientation, and as required by the hospital training category. Each student will be required to review the Health Information Privacy and Security Program Administrative Directive and sign a statement of understanding to be kept on file at the hospital. Any breach in confidentiality may result in the termination of the student's participation in the internship program at DSH.
- C. DSH shall ensure that the students take PSYT 110 New Employee Orientation, which is mandatory prior to entering the program.

**D. Rights of the DSH to Perform Quality Assurance and Financial Audits/Reviews**

- i. The DSH may routinely evaluate the work performance of the Contractor, Contractor's personnel, subcontractors, or other parties associated with the Contractor to determine if the DSH standards and departmental policies and procedures are being maintained. If it is found that any party fails to perform or is physically or mentally incapable of providing services as required by the Agreement, then that party shall not perform services for the DSH.
- ii. The DSH may monitor and evaluate services provided in fulfillment of the requirements of this Agreement, as detailed in Exhibit A. Such monitoring and evaluation may occur on a regular cycle or as deemed necessary by the Contracts Manager.
- iii. As a provider of acute psychiatric hospital services, the DSH is responsible for the professional and administrative services provided to the DSH patients. Notwithstanding the foregoing, Contractor shall provide services pursuant to its professional standard of care, the terms and conditions of this Agreement, and the requirements of Title 22 of the California Code of Regulations (the "Standards"), and shall remain liable for any violations of the Standards.

- E. It is expressly understood and agreed that no personal liability whatsoever attached to any of the officers or employees of DSH thereof by virtue of this Agreement.

**8. PERFORMANCE MEASURES:**

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

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

**9. AMENDMENTS:**

- A. The parties reserve the right to amend this Agreement by extending the term for up to one (1) additional year and to add funding sufficient for that period at the 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 A1**

**SAN LUIS OBISPO COMMUNITY COLLEGE CONTRACTOR**

**AGREEMENT FOR PSYCHIATRIC TRAINING SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between San Luis Obispo Community College CONTRACTOR, hereinafter referred to as CONTRACTOR, and \_\_\_\_\_, hereinafter referred to as EDUCATOR.

WITNESSETH;

1. The EDUCATOR agrees to serve the Department of State Hospitals Psychiatric Technician Program offered by San Luis Obispo Community College CONTRACTOR, during the period of \_\_\_\_\_.
2. The EDUCATOR will remain an employee of the Department of State Hospitals or shall directly contract for such instructional services with the Department of State Hospitals.
3. The CONTRACTOR shall be responsible for and have control of the educational program which is the subject of this Agreement and shall have responsibility for maintenance of college approved curriculum which is in compliance with Board of Vocational Nurses and Psychiatric Technicians. Activities shall be performed by the EDUCATOR in accordance with established curriculum as set forth more particularly in a contract by and between the Department of State Hospitals and the CONTRACTOR.
4. At all times while performing services under this Agreement, the EDUCATOR or EDUCATORS shall be employees of the Department of State Hospitals or other Agency, and not employees of the CONTRACTOR.

IN WITNESS WHEREOF, the said parties have hereunto set their names.

EDUCATOR

SAN LUIS OBISPO COMMUNITY  
COLLEGE DISTRICT

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

SSN: \_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT B**  
**BUDGET DETAIL AND PAYMENT PROVISIONS**

**1. INVOICING AND PAYMENT:**

- A. Invoices shall be submitted by DSH to Contractor not more frequently than three (3) times a year following each Summer, Fall, and Spring session, in arrears.
- B. For services satisfactorily rendered, and upon receipt and approval of invoices submitted as described herein, the Contractor agrees to compensate DSH in accordance with the rates specified in section 5, Budget Detail.
- C. The DSH is not responsible for services performed by Contractor outside of this agreement, nor for services performed other than as outlined in Exhibit A, Scope of Work.

**2. INSTRUCTIONS TO CONTRACTOR:**

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

San Luis Obispo Community College District  
Attention: Marcia Scott, Director of Nursing & Allied Health  
Highway One  
San Luis Obispo, CA 93405

- B. DSH shall submit one original and three copies of each invoice.
- C. DSH shall type, not handwrite, each invoice on State letterhead. The Contractor may provide an invoice template, if requested, which may be used in lieu of State letterhead.
- D. DSH shall clearly note DSH's name and address on each invoice. The name on the invoice must match the name listed on this Agreement.
- E. DSH shall list and itemize in accordance with section 5, Budget Detail, all services or deliverables provided on each invoice.
- F. DSH shall include the following on each submitted invoice:
  - i. Date(s) during which the services or deliverables were provided and the date in which the invoice was generated.
  - ii. Agreement number, which can be found on the Standard Agreement Form (Std. 213).
  - iii. Small Business certification number, if applicable
  - iv. Professional license number, if applicable
  - v. Invoice total

**3. BUDGET CONTINGENCY CLAUSE:**

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

**4. PROMPT PAYMENT CLAUSE:**

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

**5. BUDGET DETAIL:**

- A. Enrollment fees shall be assessed to students at the current rate for California residents and for non-resident students. The Contractor shall collect the enrollment fee and any non-resident fee due from the students or sponsoring agency(s) enrolled in any courses. DSH shall deliver course enrollment rosters on a timely basis.
- B. The courses offered under this Agreement shall require attendance reporting using student contact hours of attendance. Attendance hours are defined as those hours that are reported by the Contractor on the form CCFS 320 – California Colleges Apportionment Attendance Reports, Community Colleges Chancellor's Office or its representatives.
- C. Upon completion of the fiscal year, attendance hours generated by courses offered under this Agreement for each session shall be compiled. Total payment for each session to DSH shall be based upon \$3.89 per student attendance hour. Attendance hours for non-resident students are included in such computation as long as the Contractor's non-resident fees have been assessed and paid by or on behalf of such students enrolled in Contractor's course.
- D. Should the State apportionment funds for any fiscal year be deficit in any manner, the deficit will be applied proportionately to any funds due to DSH.
- E. The Contractor will reduce Full Time Equivalent Students (FTES) enrollment in DSH courses proportionate to the Contractor in times of Contractor statewide reductions in FTES enrollment.

Should this occur, DSH will have the option of continuing the Psychiatric Technician Program (PTP).

- F. The payment for instructional costs at the stated rate shall be made to DSH within thirty (30) days upon receipt of invoice by Contractor.
- G. If State apportionment funds received from this instructional program are adjusted due to subsequent audit(s) by the State of California or any of its agencies, due to the actions of the DSH PTP, the DSH PTP shall reimburse the Contractor any and all payments made to DSH which the Contractor may be obligated to return the California Community Colleges, State Chancellor's Office or have deducted from the Contractor's future apportionment funding.
- H. DSH shall accept payments as full reimbursement for costs incurred by DSH for all courses offered under this Agreement. At the end of the contract term, DSH shall provide to the Contractor an accounting of how these funds were expended in support of the instruction. It is the intent that Contractor reimbursements to DSH shall be used for direct instructional costs.
- I. Contractor shall make payments payable to DSH and mail to:

Department of State Hospitals – Atascadero  
Attn: Accounting Office  
P.O. Box 7002  
Atascadero, CA 93423-7002

- J. The costs to the Contractor for the Psychiatric Technician Program are as stated below:

Section	Course Hours	Students	Total Contact Hours	FTEs	Payment
<b>SUMMER SESSION</b>					
PSYT 110	120	30	3,600.00	6.86	\$14,004.00
PSYT 207	559.99	30	16,799.70	32.00	65,350.83
PSYT 208	543.006	30	16,290.18	31.03	63,368.80
PSYT 209	559.99	30	16,799.70	32.00	65,350.83
Summer Session Totals		120	53,489.58	101.88	\$208,074.46
<b>FALL SESSION</b>					
PSYT 110	120	30	3,600.00	6.86	\$14,004.00
PSYT 207	559.99	30	16,799.70	32.00	65,350.83
PSYT 208	543.006	30	16,290.18	31.03	63,368.80
PSTY 209	559.99	30	16,799.70	32.00	65,350.83
Fall Session Totals		120	53,489.58	101.88	\$208,074.46
<b>SPRING SESSION</b>					
PSYT 110	120	30	3,600.00	6.86	\$14,004.00
PSYT 207	559.99	30	16,799.70	32.00	65,350.83
PSYT 208	543.006	30	16,290.18	31.03	63,368.80
PSYT 209	559.99	30	16,799.70	32.00	65,350.83

Spring Session Totals	120	53,489.58	101.88	\$208,074.46
Estimated Total For Fiscal Year 2018/19				\$624,223.38
Estimated Total For Fiscal Year 2019/20				\$624,223.38
ESTIMATED TOTAL FOR CONTRACT TERM				\$1,248,446.76

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

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

**1. SUBCONTRACTS:**

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

**12. GRATUITIES AND CONTINGENCY FEES:**

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

**13. INTEGRATION CLAUSE:**

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

**14. CAPTIONS:**

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

**15. PUBLIC HEARINGS:**

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

**16. FORCE MAJEURE:**

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

**17. LITIGATION:**

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

**18. DISPUTES:**

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

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

- A. The DSH shall evaluate Contractor's performance under this Agreement using standardized evaluation forms which shall be made available to every state agency pursuant to Public Contracts Code section 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  $\geq 10$ /mm of induration, then they shall be subject to additional testing and/or clearances before he or she is allowed to work at a DSH facility.
- D. 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.

**28. AGREEMENTS FOR SERVICES ON PRISON GROUNDS:**

- A. The Contractor hereby acknowledges that the California Department of Corrections and Rehabilitation (CDCR) does not recognize hostages for bargaining purposes. The CDCR has a "NO HOSTAGE" policy and agrees that its employees may be apprised of this when performing work in or at a CDCR institution. The three DSH psychiatric programs are located within CDCR prison grounds. Contractor shall provide notice to and inform each of its officers, employees, agents, independent contractors, vendors and subcontractors of the CDCR's NO HOSTAGE policy and that Contractor, its officers, employees, independent contractors, vendors and subcontractors assume the risk that a hostage situation may arise while at a CDCR institution and the implications of the CDCR's NO HOSTAGE policy should that situation arise.

**EXHIBIT E**  
**CONFIDENTIALITY AND INFORMATION SECURITY PROVISIONS**

**1. CONFIDENTIALITY AND INFORMATION SECURITY PROVISIONS:**

- A. The 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 THE CONTRACTOR:**

- A. Except as otherwise provided in this Agreement, the 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. The 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 the 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 the Contractor for the purposes of this Agreement with PHI received by the Contractor in its capacity as the Contractor of another HIPAA covered entity, to permit data analyses that relate to the health care operations of the DSH.

## 5. SAFEGUARDS:

- A. The 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 the 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. The Contractor shall provide the DSH with information concerning such safeguards as the DSH may reasonably request from time to time.
- B. The 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. The 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), the 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. The 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. The 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 the Contractor of a use or disclosure of PHI by the 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. The 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), the 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. The 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. The 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. The Contractor shall direct communications to the DSH Information Security Officer and the 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 the 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 9<sup>th</sup> Street, Room 260  
Sacramento, CA 95814  
Phone: (916) 654-5432  
E-mail: ISO@dsh.ca.gov**

**14. INTERNAL PRACTICES:**

- A. The Contractor shall make the Contractor's internal practices, books and records relating to the use and disclosure of PHI received from DSH, or created, maintained or received by the 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 DSH's compliance with the HIPAA regulations.

**15. EMPLOYEE TRAINING AND DISCIPLINE:**

- A. The 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, the Contractor shall return, at its sole expense, to 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 DSH or created or received by the Contractor on behalf of the DSH, that the 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 the Contractor, its subcontractor(s), or its agent(s).

**17. MISCELLANEOUS PROVISIONS:**

- A. The DSH makes no warranty or representation that compliance by the Contractor with this Agreement that the HIPAA regulations shall be adequate or satisfactory for the Contractor's own purposes or that any information in the Contractor's possession or control, or transmitted or received by the Contractor, is or shall be secure from unauthorized use or disclosure. The Contractor is solely responsible for all decisions made by the Contractor regarding the safeguarding of PHI.
- B. Assistance in Litigation or Administrative Proceedings. The Contractor shall make itself, and use its best efforts to make any subcontractors, employees or agents assisting the 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 the Contractor and/or its subcontractor, employee, or agent, except where the 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 the 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. 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 the 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 the Contractor is a party.

**EXHIBIT F**  
**INSURANCE REQUIREMENTS**

**1. APPLICABLE LIABILITY INSURANCE:**

- A. The insurance and/or bonds identified below with a marked box are a required part of this Agreement, and only the marked boxes have any force or effect under this Agreement. Except as set forth below, evidence of liability insurance coverage, in the form of a certificate acceptable to the State of California and the DSH, shall be provided prior to the execution of this Agreement and the commencement of services.
- B. The DSH reserves the right, at its sole discretion, to cancel a proposed award to the Contractor which does not submit all required insurance documents in a timely manner. Should the DSH cancel a proposed award for this reason, the DSH reserves the right, at its sole discretion, to award the contract to the next lowest, responsive and responsible provider.

**Commercial General Liability:**

Contractor shall maintain general liability insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage liability combined. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought.

Should the Contractor use a subcontractor to complete a portion of this Agreement, the Contractor shall include the subcontractor as an additional named insured under the Contractor's policy, or represents and warrants that each subcontractor is insured under their own Commercial General Liability policy at the amounts specified herein. The Contractor shall supply evidence of the subcontractor's insurance to the DSH upon request.

**Requirement to Insure the State:** Contractor is required to name the "State of California, its officers, employees, and agents" as additional insured parties, insofar as operations under the Agreement are concerned. To satisfy this requirement, the Contractor shall ensure that the following requirement(s) are met:

- **Policy Endorsement:** Contractor, when providing a signed contract to the DSH and unless otherwise directed by the DSH, shall provide proof that the Contractor has insured the State of California, its officers, employees, and agents. This proof shall come in the form of an endorsement to the Contractor's insurance policy (Form CG 20 37 10 01 or similar), or in the form of a copy of the Contractor's current insurance policy that shows that the policy insures all parties required to be insured by this Agreement.

**Pollution/Environmental Impairment Liability:**

Contractor shall maintain Pollution Liability covering the Contractor's liability for bodily injury, property damage and environmental damage resulting from pollution or hazardous materials and related cleanup costs incurred, arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on-site, as well as during the transportation or disposal of hazardous materials. Contractor shall maintain limits of not less than \$1,000,000 per claim and \$2,000,000 aggregate.

**Requirement to Insure the State:** Contractor is required to name the "State of California, its officers, employees, and agents" as additional insured parties, insofar as operations under the Agreement are concerned. To satisfy this requirement, the Contractor shall ensure that the following requirement(s) are met:

- **Policy Endorsement:** Contractor, when providing a signed contract to the DSH and unless otherwise specified, shall provide proof that the Contractor has insured the State of California, its officers, employees, and agents. This proof shall come in the form of an endorsement to the Contractor's insurance policy, or in the form of a copy of the Contractor's current insurance policy that shows that the policy insures all parties required to be insured by this Agreement.

**Motor Vehicle Liability:**

Contractor shall maintain motor vehicle liability insurance with limits of not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of an accident involving a motor vehicle in use by the Contractor during the provision of services under this Agreement, including, but not limited to, Contractor owned, hired, and non-owned motor vehicles.

**Requirement to Insure the State:** Contractor is required to name the "State of California, its officers, employees, and agents" as additional insured parties, insofar as operations under the Agreement are concerned. To satisfy this requirement, the Contractor shall ensure that the following requirement(s) are met:

- **Policy Endorsement:** Contractor, when providing a signed contract to the DSH and unless otherwise specified, shall provide proof that the Contractor has insured the State of California, its officers, employees, and agents. This proof shall come in the form of an endorsement to the Contractor's insurance policy, or in the form of a copy of the Contractor's current insurance policy that shows that the policy insures all parties required to be insured by this Agreement.

**Professional Liability:**

Contractor shall maintain Professional Liability insurance covering any damages caused by an error, omission or any negligent acts. Contractor shall maintain limits of not less than \$1,000,000 per claim and \$2,000,000 aggregate.

In the event a medical professional performing services under this Agreement is a subcontractor or is performing services through a registry, the medical professional actually performing the services shall be the insured and shall comply with the Professional Liability/Medical Malpractice insurance requirements of this Agreement. The prime contractor shall be responsible to enforce this provision and employ only those medical professionals meeting this requirement. Evidence of compliant insurance shall be provided to the DSH prior to the commencement of services.

**Performance Bond:**

Contractor shall obtain and maintain a performance bond of not less than the contract price of this Agreement, which shall be executed by a California-admitted surety insurer. Bonds not so-executed shall be rejected. Contractor shall submit two (2) executed copies on standard bonding company forms.

**Payment Bond:**

Contractor shall provide the DSH with a payment bond of not less than the contract price of this Agreement. The bond shall cover the costs of labor and materials provided by the Contractor's employees, subcontractors, and suppliers in the event that the contractor fails to pay the costs of labor and materials to those individuals or entities. In order to meet this requirement, Contractor shall submit two (2) executed copies of the Payment Bond Form (STD 807). A copy of the STD 807 can be found at:  
<http://www.documents.dgs.ca.gov/osp/pdf/std807.pdf>.

**Workers' Compensation:**

If the Contractor is required by statute, regulation, or Court order, to provide Workers' Compensation and Employer's Liability Insurance for performance of services under this Agreement, Contractor shall carry and shall maintain sufficient and adequate insurance for all of its employees who shall be engaged in the performance of this Agreement. Contractor shall maintain Employer's Liability limits of not less than \$1,000,000 per claim. Failure to maintain the insurance pursuant to this clause shall be deemed a material breach of the Agreement and DSH may terminate this Agreement for cause.

If required by the DSH, in writing, Contractor shall furnish, within three (3) state business days following the DSH's request, either 1) a copy of the certificate of insurance, a "true and certified" copy of the policy, or any other proof of coverage issued by Contractor's insurance carrier reflecting workers' compensation coverage; or 2) written confirmation, in a manner defined by the DSH, that workers' compensation coverage is not required.

Contractor also agrees to indemnify, defend and hold harmless the state of California, the DSH, its officers, agents and employees from any and all claims by the Contractor's employees, agents and/or anyone representing the Contractor, related to any non-performance of this section.

**2. TERM OF INSURANCE:**

- A. Insurance shall be in effect for the entire term of this Agreement. If the insurance expires prior to the end of the term of the Agreement, a new certificate must be received by the DSH at least ten (10) days prior to the expiration of the insurance.

**3. TERMINATION FOR NON-COMPLIANCE:**

- A. In the event Contractor fails to keep in effect at all times the specified insurance coverage, this failure shall be deemed a material breach of the Agreement and the DSH may, in addition to any other remedies it may have, terminate this Agreement with cause upon the occurrence of such event.

**4. CERTIFICATE HOLDER AND SUBMISSION:**

- A. Certificates of liability insurance must name the DSH as a certificate holder and must be submitted to the following address:

Department of State Hospitals – Atascadero  
Attention: Michelle Buck  
P.O. Box 7002

Atascadero, CA 93423-7002  
[Michelle.Buck@dsh.ca.gov](mailto:Michelle.Buck@dsh.ca.gov)  
Phone: (805) 468-3700  
Fax: (805) 468-3261

**5. SELF-INSURANCE REQUIREMENTS:**

- A. If the Contractor is a California governmental entity, Contractor is not required to provide proof of insurance.
- B. For all other Contractors, for Workers' Compensation insurance, the Contractor must be listed on the Department of Industrial Relations website as having a Certificate of Consent to Self-Insure.
- C. For all other Contractors, for all other insurance categories, the Contractor must provide:
  - i. A cover letter from the Contractor's risk manager (or similar position) providing a description of the self-insurance plan for the types of coverage required in this Agreement. The description must detail what is covered by the plan and identify the source of funds for financing the plan.
  - ii. An audited financial report from the most recent quarter, along with any applicable accounting letters relative to the report.
  - iii. Evidence of firm having current equity of at least \$5,000,000 and current net profit of at least \$500,000.
  - iv. A signed written statement from the Contractor's Certified Public Accountant (CPA) indicating the firm's annual net profit for the prior four (4) years has been a minimum of \$500,000.
- D. Contractor agrees to submit to the DSH evidence of, upon request by the DSH, and the DSH reserves the right to verify, or cause to be verified, the source of funds for financing the self-insurance plan. The DSH also reserves the right to require subsequent assistance from the Contractor's risk manager to provide explanations of aspects of the self-insurance plan which need clarification. Upon request by the DSH, Contractor shall provide additional reasonable assurances and documentation to the DSH of its ability to meet the requirements to self-insure.
- E. Contractors which are self-insured for a specific type of insurance do not need to add the State as an additional insured.