

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

AGREEMENT NUMBER

09-79119-000

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

California Department of Mental Health

CONTRACTOR'S NAME

California Mental Health Services Authority

2. The term of this Agreement is: April 15, 2010 through June 30, 2012

3. The maximum amount of this Agreement is: \$ 160,000,000.00  
 One Hundred Sixty Million 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.

Exhibit A -- Scope of Work	4 pages
Exhibit B -- Budget Detail and Payment Provisions	2 pages
Exhibit C -- General Terms and Conditions	2 pages
Exhibit - D General Provisions and Standards of Conduct	4 pages
Exhibit E -- Confidentiality and Information Security Provisions	5 pages

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 [www.ols.dgs.ca.gov/Standard+Language](http://www.ols.dgs.ca.gov/Standard+Language)

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

**CONTRACTOR**

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

California Mental Health Services Authority

BY (Authorized Signature)

DATE SIGNED (Do not type)

*Alvin K. ...*  
 PRINTED NAME AND TITLE OF PERSON SIGNING  
 ALVIN K. ... PRESIDENT

*April 13, 2010*

ADDRESS

C/O George Hills Company, 3043 Gold Canal Drive, Suite 200  
 Rancho Cordova, CA 95670-6394

**STATE OF CALIFORNIA**

AGENCY NAME:

California Department of Mental Health

BY (Authorized Signature)

DATE SIGNED (Do not type)

*Stanley A. ...*  
 PRINTED NAME AND TITLE OF PERSON SIGNING  
 Stanley A. Gajarin, Deputy Director of Administrative Services

*4.29.10*

ADDRESS

1600 9th Street, Room 101, Sacramento, CA 95814

California Department of General Services Use Only

Exempt from Compliance with the Public Contract Code, the State Administrative Manual, and from approval by the Department of General Services per section 5897 (e) of the Welfare and Institutions Code.

Exempt per: W&IC 5897(e)

DMH USE ONLY

State Master     Contractor     Contract Manager     Accounting     State Controller

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

1. California Mental Health Services Authority (CalMHSA), a Joint Powers Authority (JPA) of county mental health programs (Counties) acting jointly pursuant to Welfare and Institutions Code (WIC) section 5897(a) herein referred to as Contractor, agrees to provide to the California Department of Mental Health (CDMH) program development, administrative oversight and fiscal management services for its members and other County participants, in accordance with the terms of the Joint Powers Agreement that can be located at [www.calmhsa.org](http://www.calmhsa.org) and this Contract. Specifically the Contractor will, consistent with the requirements of the Mental Health Services Act (MHSA) and as approved by the Mental Health Services Oversight and Accountability Commission (MHSOAC) and CDMH, develop and implement Prevention and Early Intervention (PEI) programs, on a statewide or regional basis that conform with the "Guidelines for PEI Statewide Programs" issued by the MHSOAC and the three State Strategic Plans referenced therein. The purposes of these programs will be reducing suicides, eliminating stigma and discrimination related to mental illness, and promoting student mental health. This Contract will be funded exclusively from funds in the "PEI State-Administered Projects Planning Estimates", now called the "PEI State-Administered Component Allocations", published on September 11, 2008.
2. The services shall be performed at the offices of CalMHSA, c/o George Hills Co., 3043 Gold Canal Drive, Ste. 200, Rancho Cordova, CA 95670-6394. Funds distributed to the counties are authorized to be used to subcontract for services in accordance with WIC 5897(b). The Contractor shall be responsible for all activities of any subcontractor(s) relating to this Contract.
3. The program representatives during the term of this Contract will be:

State Agency: Department of Mental Health (DMH)	Contractor: California Mental Health Services Authority (CalMHSA)
Name: (1) Sandy Lyon (for Administrative matters) (2) Mark Heilman (for Program matters)	Name: John Chaquica
DMH	CalMHSA c/o George Hills Co.
1600 9 <sup>th</sup> Street Room 150	3043 Gold Canal Drive, Suite 200
Sacramento, CA 95814	Rancho Cordova, CA 95670-6394
916-651-3966 (Sandy); 916-651-8037 (Wendy)	916.859.4800
Fax: 916-651-3862 or 916-654-6394	Fax: 916.859.4805

4. Responsibilities of the parties:
  - A. CDMH responsibilities:
    - (1) Enactment of all regulations required to implement programs pursuant to this Contract.
    - (2) Prompt notification to the Contractor of any legislation, regulations, and guidelines that may affect the programs subject to this Contract.

- (3) Identification of any and all funds that counties have assigned to the State and or delegated to the Contractor for the purpose of funding the development and implementation of Statewide PEI programs by the Contractor.
- (4) Review of and comment on Three-Year Program and Expenditure Plan updates, and/or work plans submitted by the Contractor or its members as provided for by WIC section 5847, subdivisions (b) and (d).
- (5) Accounting of and reporting, as necessary, to the Contractor on the distribution of monies from the State Mental Health Services Fund (MHS Fund) to the Contractor for the purposes outlined in this Contract.
- (6) Provision of technical assistance, as needed, to the Counties or the Contractor, as provided for in WIC 5846.

B. Contractor responsibilities:

- (1) Utilization of funds provided under this Contract in accordance with the MHSA, state regulations and directives, policies, procedures, and guidelines and the Three-Year Program and Expenditure Plan, updates, and/or work plans approved by the MHSOAC and CDMH.
- (2) Adherence to controls, record-keeping, reporting and accounting procedure requirements of the MHSA, and all applicable regulations, directives, policies and procedures to ensure the proper disbursement of, and accounting for, funds paid to the Contractor and disbursed by the Contractor, under this Contract.
- (3) Development of Three-Year Program and Expenditure Plans, updates, and/or work plans on behalf of and in coordination with individual Counties and consistent with applicable laws, regulations and guidelines issued by the State, for the provision of services and the expenditure of funds encumbered under this Contract for statewide or regional PEI programs designed in accordance with the "Guidelines for Prevention and Early Intervention (PEI) Statewide Programs" issued by MHSOAC.
- (4) Submission of Three-Year Program and Expenditure Plan updates, and/or work plans in coordination with individual Counties, and consistent with Guidelines issued by the MHSOAC pursuant to WIC 5846(c), to CDMH for review and comment and to the MHSOAC for review and approval.
- (5) Placement of funds distributed under this Contract from the MHS Fund into a separate account established for this Contract (Account). The Contractor shall account for funds in accordance with WIC 5892(f) and in a manner to allow the State to exercise its responsibility in accordance with WIC 5892(h).
- (6) Accounting of funds received on behalf of each County within the account established pursuant to this Contract.
- (7) Investment of funds received from the MHS Fund and transfer of interest and other income earned from such investments, in accordance with WIC 5892(f) and all applicable laws, regulations, policies and procedures.

- (8) Accounting for income generated from investment of funds received from the MHS Fund in a manner that distinguishes this income from other MHSA funds.
- (9) Assurance that the expenditure of funds distributed under this Contract is consistent with a currently approved Three-Year Program and Expenditure plan or update pursuant to WIC 5847.
- (10) Development and submission of reports of services, activities, performance attainment, expenditures, status of cash and closeout information or additional reports by the dates specified by the State in regulations, Information Notices, MHSA guidelines, and policy letters.
- (11) In coordination with other statewide entities that hold County funds for PEI State-Administered Programs to coordinate such programs between CalMHSA and other statewide entities.

5. Deliverables

- A. In order to receive funds to administer and/or implement an MHSA program, the Contractor shall, on behalf of and in coordination with individual Counties and consistent with all applicable statutes, regulations, guidelines, policies and requirements, submit to CDMH for review and comment and to the MHSOAC for review and approval a Three-Year Program and Expenditure Program Plan, update, and/or work plan that requests funds for that program.
  - (1) This Contract shall be amended at a later date to include specific deliverables consistent with the Three-Year Program and Expenditure Plan, update, and/or work plans submitted by CalMHSA on behalf of Counties and approved by CDMH and the MHSOAC.
- B. Commencing in FY 2010/2011 and each fiscal year thereafter, not later than December 31, the Contractor shall provide to CDMH the following information for the previous fiscal year:
  - (1) An accounting of the funds administered by the Contractor in aggregate, to include:
    - a.) Amount at the beginning of the fiscal year in the account specified in item 5.B.(5).
    - b.) Amounts received during the fiscal year.
    - c.) Amount disbursed throughout the fiscal year.
  - (2) An accounting of funds by County as specified in item 5.B.(6) to include:
    - a.) Amount at the beginning of the reporting term.
    - b.) Amount of funds received for each County.
    - c.) Amount of interest earned on funds by date posted to the account.
    - d.) Amount of funds remaining for each County at the end of the reporting term.

- e.) A report on the total amount of encumbered and unencumbered funds.
  - C. The Contractor shall prepare and distribute at its meetings quarterly reports of all of its revenues and expenditures.
  - D. The Contractor shall keep such books and records of the operation of the programs and the Account, pursuant to generally accepted accounting principles for governmental entities, practices and applicable laws and regulations. CDMH, or its representative, shall have the right to audit the programs and Account, at its expense, and upon reasonable notice to the Contractor.
6. Other Conditions
- A. CDMH may terminate this Contract in whole or in part when it has determined that the Contractor has willfully violated a specific provision of the MHSA or affiliated regulations. In the event of a violation that CDMH does not determine to be willful, CDMH will request from Contractor a plan of correction with a specific timeline to achieve improvements. If Contractor fails to timely make the necessary improvements, CDMH may terminate this Contract. If CDMH terminates this Contract, it will provide a termination notice in writing to the Contractor.
  - B. Failure to adhere to the specified reporting requirements contained in this Contract may result in CDMH not releasing funds to the Contractor.

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

1. 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 Contract does not appropriate sufficient funds for the program, this Contract 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 consideration under this Contract and Contractor shall not be obligated to perform any provisions of this Contract.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Contract with no liability occurring to the State, or offer a Contract amendment to Contractor to reflect the reduced amount.
- C. If this Contract overlaps Federal and State fiscal years, should funds not be appropriated by Congress or approved by the Legislature for the fiscal year(s) following that during which this Contract was executed, the State may exercise its option to cancel this Contract.

In addition, this Contract is subject to any additional restrictions, limitations, or conditions enacted by Congress or the Legislature that may affect the provisions or terms of funding of this Contract in any manner.

2. Prompt Distribution Clause

- A. The State will promptly distribute funds to the Contractor, contingent upon approval by the MHSOAC and notification of approval to CDMH by the MHSOAC, of Three-Year Program and Expenditure Plan updates submitted by the Contractor on behalf of Counties. "Prompt distribution" means distribution within 60 days of satisfaction of the conditions stated in this section.
- B. Upon the approval date of this Contract and pursuant to MHSOAC approval of the Contractor's Three-Year Program and Expenditure Plan or update, with the exception of funds approved for local planning purposes, CDMH shall distribute MHSA funds for approved Three-Year Program and Expenditure Plans and updates to the Contractor as follows:
  - 1.) Seventy-Five percent (75%) of State Fiscal Year Plan Approved amount upon approval of the Three-Year Program and Expenditure Plan(s) or updates or at the start of the State Fiscal year, whichever is later;
  - 2.) Twenty-Five percent (25%) of State Fiscal Year Plan approved amount upon receipt by the State of completed fiscal and programmatic reports, as required by this Contract.
- C. Funds requested by the County and approved for planning purposes by the MHSOAC will be distributed in total to the Contractor upon approval. Such funds will be limited to the amounts prescribed by Welfare and Institutions Code section 5892(c).

### 3. Payment Clause

- A. A maximum of fifteen percent (15%) of any and all funds that Counties have assigned to the State and or delegated to the Contractor for the purpose of funding the development and implementation of Statewide PEI programs by Contractor can be utilized for indirect administrative costs. The Contractor may request to exceed the 15% level, if the Counties that have assigned to the State, and or delegated to the Contractor, have approved indirect administrative costs approved by the State that exceed 15%. Methodology for calculating the indirect administrative costs above 15% will be representative of the Counties who have assigned to the State, and/or delegated to the Contractor, and will be agreed upon by the Contractor and CDMH. Indirect administrative costs allowed for MHSA PEI Statewide programs/projects to include:
- 1.) Salaries and benefits of employees who do not provide direct client services but work in accounting or budgeting or perform centralized personnel functions.
  - 2.) Operating expenses associated with staff who do not provide direct client services.
  - 3.) The MHSA portion of the member county OMB Circular A-87 costs to the extent they are apportioned to the JPA.
  - 4.) Costs associated with evaluation of PEI Statewide programs/projects.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Contract is of no force or effect until signed by both parties and approved by the Department of General Services, if required. The Contractor may not commence performance until such approval has been obtained.

2. ASSIGNMENT: This Contract 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.

3. AUDIT: The Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representatives shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Contract. The 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. The 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 Contract. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

4. DISPUTES: The Contractor shall continue with the responsibilities under this Contract during any dispute.

5. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.

6. 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).

7. NON-DISCRIMINATION CLAUSE: During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair



Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. 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 Contract.

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

8. TIMELINESS: Time is of the essence in this Contract.

9. 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.

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

11. CHILD SUPPORT COMPLIANCE ACT: "For any Contract 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."

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

13. 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.

**EXHIBIT D**  
General Provisions and Standards of Conduct:

**1. Compliance**

In performance of this Contract, Contractor will fully comply with:

- a). The provisions of the Mental Health Services Act and all applicable regulations, related statutes, directives, policies, procedures and amendments.

The Contractor will ensure diligence in managing programs under this Contract, including performing sufficient monitoring activities and taking prompt corrective action against known violations of the MHSA.

This Contract contains the entire Contract of the parties and supersedes all negotiations, verbal or otherwise and any other Contract between the parties hereto. This Contract is not intended to and will not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association between the State and the Contractor. The Contractor represents and warrants it is free to enter into and fully perform this Contract.

**2. Certification / Assurances**

Except as otherwise indicated, the following certifications apply to all Counties:

- a). Indemnification: Pursuant to the provision of Section 895.4 of the California Government Code, each party agrees to indemnify and hold the other party harmless from all liability for damage to persons or property arising out of or resulting from acts or omissions of the indemnifying party.

**3. Standards of Conduct**

The following standards apply to the Contractor:

- a). Every reasonable course of action will be taken by the Contractor in order to maintain the integrity of this expenditure of public funds and to avoid favoritism and questionable or improper conduct. This Contract will be administered in an impartial manner, free from efforts to gain personal, financial or political gain.
- b). An executive, director or employee of the Contractor, shall not solicit or accept money or any other consideration from a third person, for the performance of an act reimbursed in whole or part by the Contractor or the State. Supplies, materials, equipment or services purchased with Contract funds will be used solely for purposes allowed under this Contract. No member of the Contractor's Board will cast a vote on the provision of services by that member (or any organization, which that member represents) or vote on any matter which would provide direct financial benefit to that member (or immediate family of the member) or any business or organization which the member directly represents.
- c). The State, by written notice to the Contractor, may terminate the right of the Contractor to proceed under this Contract if it is found, after notice and hearing by the State, 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 with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or performing of such Contract, provided that the existence of the facts upon which the

State makes such findings that shall be an issue may be reviewed in any competent court.

In the event this Contract is terminated as provided in the paragraph above, the State shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of the breach of the Contract by the Contractor

The rights and remedies of the Contractor provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. The Contractor warrants by execution of this Contract that no person or selling agency has been employed or retained to solicit or secure this Contract upon a Contract or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or agents of the Contractor, for the purpose of securing business. For breach or violation of this warranty, the State shall have the right to annul this Contract without liability, paying only for the values of the work actually returned, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

- d). Contractor employees, and sub-contractors and/or consultants retained by the Contractor with funds provided under this Contract must comply with the provisions of Government Code Section 19990.

#### **4. Subcontracting**

The Contractor certifies that:

- a). Any of the work or services specified in this Contract which will be performed by other than the Contractor will be evidenced by a written Contract specifying the terms and conditions of such performance.
- b). The Contractor will maintain and adhere to an appropriate system, consistent with federal, state and local law, for the award and monitoring of contracts which contain acceptable standards for insuring accountability.
- c). The system for awarding contracts will contain safeguards to insure that the Contractor does not contract with any entity whose officers have been convicted of fraud or misappropriation of funds.
- d). Subcontractors will comply with all terms and conditions set forth in this Contract.

#### **5. Resolution**

The Contractor must provide the State with a copy of a resolution, order, motion or ordinance of its governing body which by law has the authority to enter into a Contract, authorizing execution of this Contract. Documents submitted authorizing execution of the Contract must reference the Contract number and must contain a statement of approval by the local governing body.

Additionally, the Contractor may designate an individual to act as fiscal and programmatic administrative agent for the purposes of this Contract. If the Contractor exercises this discretion, they must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into a Contract, authorizing the designation of an agent. Preferably resolutions should authorize a designated position rather than a named individual.

## 6. Payment

The Contractor's failure to submit complete and accurate required fiscal and programmatic reports may affect future State Fiscal Year distributions.

Funds requested by the Contractor and approved by the State for local planning purposes will be distributed in total upon approval by the State.

## 7. Termination

Upon the Contractor's receipt of notice of termination from the State, and except as otherwise directed in the notice, the Contractor shall:

- a.) Stop work on the date specified in the notice;
- b.) Place no further orders or enter into any further subcontracts for materials, services or facilities except as necessary to complete work under the Contract up to effective date of termination;
- c.) Terminate all orders and subcontracts;
- d.) Promptly take all other reasonable and feasible steps to minimize any additional cost, loss, or expenditure associated with work terminated, including, but not limited to reasonable settlement of all outstanding liability and claims arising out of termination of orders and subcontracts;
- e.) Deliver or make available to the State all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor under this Contract, whether completed, partially completed, or in progress;
- f.) In the event of termination, an equitable adjustment in the funds provided by this Contract shall be made. Such adjustment shall include reasonable compensation for all services rendered, materials, supplies, and expenses incurred pursuant to this Contract prior to the effective date of termination;
- g.) In the event an adjustment is made as specified in Item F above, the Contractor will promptly return to the State all unexpended distributions advanced pursuant to Item 7 of the Contract.

Notices to the Contractor will be addressed to:

California Mental Health Services Authority  
C/O George Hills Company  
3043 Gold Canal Drive, Suite 200  
Rancho Cordova, CA 95670-6394

## 8. Audits

- a.) From time to time, the State may inspect the facilities, systems, books and records of the Contractor to monitor compliance with this Contract. The Contractor shall promptly remedy any violation of any provision of this Contract and shall certify the same to the State in writing. The fact that the State inspects, or fails to inspect, or has the right to inspect, the Contractor's facilities, systems and procedures does not relieve the Contractor of its responsibilities to comply with this Contract. The State's failure to detect or detection, but failure to notify the Contractor or require the Contractor's remediation of any unsatisfactory practice, does not constitute acceptance of such practices or a waiver of the State's enforcement rights under this Contract.

- b). The Contractor will maintain and make available to auditors, at all levels, accounting and program records including supporting source documentation and cooperate with all auditors.
- c). The Contractor and/or auditors performing monitoring or audits of the Contractor or its sub-contracting service providers will immediately report to the State any incidents of fraud, abuse or other criminal activity in relation to this Contract, the MHSA, or its regulations.

**9. Disallowed Costs**

The Contractor will use funds provided under this Contract for the purposes specified in the MHSA and approved Three-Year Program and Expenditure Plan. Except to the extent the State determines it will assume liability, the Contractor will be liable for and will repay, to the State, any amounts expended under this Contract found not in accordance with MHSA, applicable regulations, directives, policies and the Three-Year Program and Expenditure Plan or this Contract.

**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 Sections 14100.2 and 5328 et seq. of the Welfare and Institutions Code, Section 431.300 et seq. of Title 42, Code of Federal Regulations (CFR), and the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to Section 1320 d et seq., of Title 42, United States Code and its implementing regulations (including but not limited to Title 45, CFR, Parts 160, 162 and 164) regarding the confidentiality and security of Individually Identifiable Health Information (IIHI).
- B. Permitted Uses and Disclosures of IIHI by the Contractor.
- i. *Permitted Uses and Disclosures.* Except as otherwise provided in this Contract, the Contractor, may use or disclose IIHI to perform functions, activities or services identified in this Contract provided that such use or disclosure would not violate federal or state laws or regulations.
  - ii. *Specific Uses and Disclosures Provisions.* Except as otherwise indicated in the Contract, the Contractor may:
    - a. Use and disclose IIHI for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided that such use and disclosures are permitted by law.
    - b. Use IIHI to provide data aggregation services to DMH. Data aggregation means the combining of IIHI created or received by the Contractor for the purposes of this contract with IIHI 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 DMH.
- C. *Safeguards.* 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 IIHI that it creates, receives, maintains, or transmits; and prevent the use or disclosure of IIHI other than as provided for by this Contract. The Contractor shall provide DMH with information concerning such safeguards as DMH may reasonably request from time to time.

The Contractor shall implement administrative, technical, and physical safeguards to ensure the security of DMH 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 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.

- D. The Contractor shall implement appropriate authentication methods to ensure information system access to confidential, personal (e.g., IIHI) 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. The Contractor shall:
- i. Implement the following security controls on each server, workstation, or portable (e.g., laptop computer) computing device that processes or stores confidential, personal, or sensitive data:
    - a. Network-based firewall and/or personal firewall
    - b. Continuously updated anti-virus software
    - c. 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 DMH 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.
- 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.
- E. Mitigation of Harmful Effects. Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of IIHI by Contractor or its subcontractors in violation of the requirements of this Contract.
- F. Notification of Breach. During the term of this Contract:
- i. Discovery of Breach. Contractor shall immediately notify the DMH Information Security Officer by telephone call plus e-mail upon the discovery of breach of security of IIHI in all forms (paper, electronic, or oral) if the IIHI 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 IIHI in violation of this Contract, or potential loss of confidential data affecting this Contract. If the incident occurs after business hours or on a weekend or holiday and involves IIHI, notification shall be provided by calling the DMH Information Security Officer. Contractor shall take:

- a. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
  - b. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- ii. Investigation of Breach. Contractor shall immediately investigate such security incident, breach, or unauthorized use or disclosure of IIHI or confidential data. Within 72 hours of discovery (of the breach), Contractor shall notify the DMH Information Security Officer of:
- a. What data elements were involved and the extent of the data involved in the breach,
  - b. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed IIHI or confidential data,
  - c. A description of where the IIHI or confidential data is believed to have been improperly transmitted, sent, or utilized,
  - d. A description of the probable causes of the improper use or disclosure; and
  - e. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
- iii. Written Report. Contractor shall provide a written report of the investigation to the DMH 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.
- iv. Notification of Individuals. 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 DMH Information Security Officer shall approve the time, manner and content of any such notifications.
- v. DMH Contact Information. Contractor shall direct communications to the DMH Information Security Officer and the Contractor shall initiate contact as indicated herein. DMH 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 Contract to which it is incorporated.

**Information Security Officer**  
**California Department of Mental Health**  
**1600 9<sup>th</sup> Street, Room 433**  
**Sacramento, CA 95814**  
**Phone: (916) 651-6776**  
**E-mail: ISO@dmh.ca.gov**



- G. **Agents and Subcontractors of the Contractor.** Contractor shall ensure that any agent, including a subcontractor to which the Contractor provides IHI received from, or created or received by the Contractor under this Contract, shall comply with the same restrictions and conditions that apply through this Contract to the Contractor with respect to such information.
- H. **Internal Practices.** Contractor shall make Contractor's internal practices, books and records relating to the use and disclose of IHI received from DMH, or created or received by the Contractor under this Contract, available to DMH or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DMH or by the Secretary, for purposes of determining DMH's compliance with the HIPAA regulations.
- I. **Employee Training and Discipline.** Contractor shall train and use reasonable measures to ensure compliance with the requirements of this Contract by employees who assist in the performance of functions or activities under this Contract and use or disclose IHI; and discipline such employees who intentionally violate any provisions of this Contract, including by termination of employment.
- J. **Effect of Termination.** Upon termination or expiration of this Contract for any reason, Contractor shall return or destroy all IHI received from DMH (or created or received by Contractor under this Contract that Contractor still maintains in any form, and shall retain no copies of such IHI or, if return or destruction is not feasible, it shall continue to extend the protections of this Contract to such information, and limit further use of such IHI to those purposes that make the return or destruction of such IHI infeasible. This provision shall apply to IHI that is in the possession of subcontractors or agents of the Contractor.
- K. **Miscellaneous Provisions.**
- i. **Disclaimer.** DMH makes no warranty or representation that compliance by Contractor with this Contract, HIPAA or the HIPAA regulations shall be adequate or satisfactory for 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. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of IHI.
  - ii. **Assistance in Litigation or Administrative Proceedings.** Contractor shall make itself, and use its best efforts to make any subcontractors, employees or agents assisting Contractor in the performance of its obligations under this Contract, available to DMH at no cost to DMH to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DMH, its directors, officers or employees for claimed violation of HIPAA, the 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 Contractor or its subcontractor, employee, or agent is a named adverse party.
    - a. **No Third-Party Beneficiaries.** Nothing expressed or implied in the terms and conditions of this Contract is intended to confer, nor shall anything herein confer,

upon any person other than DMH or Contractor and their respective successors or assignees, any rights remedies, obligations or liabilities whatsoever.

- b. Interpretation. The terms and conditions in this Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of this Contract shall be resolved in favor of a meaning that complies and is consistent with state and federal law, including HIPAA and the HIPAA regulations.
- c. Regulatory References. A reference in the terms and conditions of this Contract to a section in the HIPAA regulations means the section as in effect or as amended.
- d. Survival. The respective rights and obligations of Contractor under this Contract shall survive the termination or expiration of this Contract.

## **2. VIOLATIONS**

Violations reported to U.S. Department of Health and Human Services. Upon DMH's knowledge of a material breach of this Contract by Contractor, that has not been cured or for which termination of the Contract is not feasible, the DMH Information Security Officer shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

## **3. JUDICIAL OR ADMINISTRATIVE PROCEEDINGS**

DMH may terminate this Contract, effective immediately, 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 is made in an administrative or civil proceeding in which the Contractor is a party.