

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

20-10826

PURCHASING AUTHORITY NUMBER (If Applicable)

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

CONTRACTING AGENCY NAME

California Department of Public Health

CONTRACTOR NAME

ProLink Healthcare, LLC

2. The term of this Agreement is:

START DATE

December 17, 2020

THROUGH END DATE

June 30, 2021

3. The maximum amount of this Agreement is:

\$10,000,000.00

Ten 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.

Exhibits	Title	Pages
Exhibit A	Scope of Work	2
Exhibit A	Attachment I - Services Agreement	7
Exhibit B	Budget Details and Payment Provisions	3
+ - Exhibit B	Attachment I - Express Response Terms and Conditions	2
+ - Exhibit C*	General Terms and Conditions	GTC 04/2017
+ - Exhibit D	Federal Emergency Management Agency	5
+ - Exhibit E	HIPPA Business Associate Addendum	14

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

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

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

CONTRACTOR

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

ProLink Healthcare, LLC

CONTRACTOR BUSINESS ADDRESS

4600 Montgomery Rd. Suite 300

CITY

Cincinnati

STATE

OH

ZIP

45212

PRINTED NAME OF PERSON SIGNING


Mark Arnett

TITLE

CFO

CONTRACTOR AUTHORIZED SIGNATURE

Mark Arnett

 Digitally signed by Mark Arnett
Date: 2020.12.18 15:55:23 -05'00'

DATE SIGNED

12-18-2020

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

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AGREEMENT NUMBER

20-10826

PURCHASING AUTHORITY NUMBER (If Applicable)

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

California Department of Public Health

CONTRACTING AGENCY ADDRESS

1616 Capitol Avenue

CITY

Sacramento

STATE

CA

ZIP

95814


PRINTED NAME OF PERSON SIGNING

Amy Manasero

TITLE

Assistant Branch Chief, Program Support Branch

CONTRACTING AGENCY AUTHORIZED SIGNATURE

Amy Manasero Digitally signed by Amy Manasero
Date: 2020.12.18 13:07:58 -08'00'

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

Proclamation of a State of Emergency/Executive
Order N-25-20

Exhibit A
Scope of Work

1. Service Overview

Contractor agrees to provide to the California Department of Public Health (CDPH) the services described herein.

ProLink shall recruit, screen, employ, manage, and supply Providers to State or to licensed health care facilities located within the State of California on a temporary basis ("Staffing Services") or recruit, screen, and submit Providers as candidates for permanent positions with State or with licensed health care facilities located within the State of California ("Direct Hire Services"). Staffing Services and Direct Hire Services are collectively referred to as "Services" throughout this Agreement. The parties acknowledge and agree that ProLink's duty to provide Services is subject to the availability of qualified Providers, and ProLink cannot guarantee the outcome or performance of Providers placed with State on a temporary or direct hire basis.

2. Service Location

The services shall be performed at various licensed health care facilities located within the State of California.

3. Service Hours

The services shall be provided during Normal Contractor working hours Monday through Friday.

Project Representatives

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

California Department of Public Health	ProLink Healthcare, LLC
Jennifer Hill, SSM II Fiscal Operations Section Telephone: (916) 552-8722 E-mail: Jennifer.Hill3@cdph.ca.gov	Taylor Stott, Contract Administrator Telephone: (330) 697-5362 E-mail: tstottprolinkstaff.com

B. Direct all inquiries to:

California Department of Public Health	ProLink Healthcare, LLC
Center for Health Care Quality Attention: Jennifer Hill, SSM II, FOS 1616 Capitol Avenue Sacramento, CA 95814 Telephone: (916) 552-822 E-mail: Jennifer.Hill3@cdph.ca.gov	Attention: Mark Arnett, CFO 4600 Montgomery Rd. Suite 300 Cincinnati, OH 45212 Telephone: (513) 698-8157 Fax: (513) 489-5301 E-mail: marnett@prolinkstaff.com

C. All payments from CDPH to the Contractor; shall be sent to the following address:

Remittance Address	
Contractor:	ProLink Healthcare, LLC
Attention:	Cashier
Address:	4600 Montgomery Road Cincinnati, OH 45212
Phone:	(513) 698-8157
Fax:	
E-mail:	marnett@prolinkstaffing.com

D. Either party may make changes to the information above by giving written notice to the other party.
Said changes shall not require an amendment to this agreement.

6. Services to be Performed

A. Please see attached Exhibit A – Attachment I, Services Agreement.

**Exhibit A
Attachment I**

SERVICES AGREEMENT

This Services Agreement ("Agreement") is effective as of 12/15/2020 ("Effective Date") between ProLink Healthcare, LLC, an Ohio limited liability company ("ProLink") and the California Department of Public Health, a(n) California government agency, ("State" or "Client").

1. SCOPE OF SERVICES

1.1. Services Provided. ProLink employs or otherwise contracts with qualified healthcare professionals ("Providers") that are capable of meeting State's staffing needs. Upon State's request, ProLink shall recruit, screen, employ, manage, and supply Providers to State or to licensed health care facilities located within the State of California on a temporary basis ("Staffing Services") or recruit, screen, and submit Providers as candidates for permanent positions with State or with licensed health care facilities located within the State of California ("Direct Hire Services"). Staffing Services and Direct Hire Services are collectively referred to as "Services" throughout this Agreement. The parties acknowledge and agree that ProLink's duty to provide Services is subject to the availability of qualified Providers, and ProLink cannot guarantee the outcome or performance of Providers placed with State on a temporary or direct hire basis.

1.2. Exclusivity. ProLink is not bound to the exclusive service of State by virtue of this Agreement and remains free to perform Services for other individuals or entities while this Agreement is in effect. State is not bound to the exclusive use of ProLink by virtue of this Agreement and remains free to retain other entities to perform Services while this Agreement is in effect.

1.3. Independent Contractor. This Agreement creates an independent contractor relationship between State and ProLink. ProLink is not and will not become an employee, partner, agent, or principal of State or any successor while this Agreement is in effect. Neither party has any right, authority, or duty to act for the other party, except as otherwise specified in this Agreement.

1.4. Use of Subcontractors. ProLink may perform any of its obligations under this Agreement, including the sourcing of Providers, by engaging the services of one or more subcontractors involved in the business of temporary healthcare staffing ("Affiliate Vendors"). ProLink shall remain solely responsible for the procurement, payment, and performance of its Affiliate Vendors and shall engage Affiliate Vendors through a written contract that discloses the terms of this Agreement and requires compliance with this Agreement in the performance of services. Any communications regarding the provision of Staffing Services or the administration of this Agreement shall be conducted solely between ProLink and State, and State shall immediately notify ProLink in the event that an Affiliate Vendor initiates contact with State.

2. ADMINISTRATION OF SERVICES

2.1. General. State shall notify ProLink of its staffing needs, and ProLink will attempt to outsource Providers that meet State's personnel needs. With respect to each open position, State shall specify: (i) the specialty or type of personnel needed and the required qualifications, (ii) the location to which the Provider will be assigned, (iii) the anticipated length of the assignment, including shift times, duration, and whether the position is temporary or direct hire, and (iv) any training or other requirements. The dates, terms of service, and other relevant information for each selected Provider will be specified in writing and delivered to State prior to the commencement of each assignment ("Confirmation of Assignment"). If the Confirmation of Assignment conflicts with the terms of this Agreement, this Agreement will prevail.

2.2. Selection and Dismissal of Providers. State has the right to interview all prospective Providers and to accept or reject them in State's sole discretion. State acknowledges that it is solely responsible for making the selection decision with respect to Providers presented by ProLink. In addition, State has the right to dismiss a Provider at any time prior to or during an assignment in State's sole

discretion. If a Provider is rejected or dismissed, ProLink shall provide a satisfactory replacement as soon thereafter as possible.

2.3. Employment of Providers. All Providers that are placed with State on a temporary or assignment basis shall remain employees of ProLink, which will be solely responsible for such Providers' wages, payroll taxes, benefits, professional liability insurance, and unemployment and workers compensation insurance. State shall not make any contribution to Social Security, unemployment insurance, or workers compensation on behalf of such Providers and shall not provide, offer, or promise any compensation or benefits to the Providers.

2.4. Qualification of Providers. ProLink shall ensure that each Provider meets the qualifications of the position as communicated by State and that the qualifications continue to be met throughout the term of the engagement. In addition, ProLink shall ensure that an updated employment file is maintained for each Provider that complies with The Joint Commission requirements. The components of the employment file and the pre-qualification requirements for Providers are described in **Exhibit A**.

2.5. State Policies. ProLink and the Providers shall comply with State's policies and procedures, including State's workplace policies, codes of conduct, wage and hour policies, and any other standards related to performance, the reporting of patient abuse, safety, dress code, and documentation. In the event that State requires a Provider to undergo drug or alcohol testing pursuant to its policies, State shall provide ProLink with the written results of the Provider's testing.

2.6. State Duties. With respect to the Providers, State shall: (i) supervise all assigned work, (ii) provide a safe work site, (iii) provide appropriate information, training, and equipment for the handling of any hazardous substances or conditions, (iv) provide equipment necessary for the performance of assigned duties, (v) explain its rules and regulations for workplace conduct, and (vi) conduct any required training and orientation. State's designated supervisor will evaluate the work of each Provider from time to time, and the parties will work collaboratively to resolve any issues related to the work of Providers.

2.7. Assignment Restrictions. State shall use Providers only for the specific need requested and shall not alter the job duties described in the Confirmation of Assignment, except that State may require qualified Providers to float between appropriate units that are within the Provider's designated area of qualification. Without prior written consent from ProLink, job duties of Providers shall not include the operation of any vehicles. State shall not entrust Providers with unattended cash, checks, credit cards, or other valuables.

2.8. Discipline. State shall notify ProLink of any problems or disciplinary situations involving Providers within 48 hours after the occurrence and shall provide ProLink with copies of all documentation related to problems or incidents in which Providers are involved. The parties agree to cooperate fully in the investigation and resolution of any complaints, claims, actions, or proceedings that may be brought by or that may involve Providers. In addition, State shall promptly notify ProLink of the initiation of any complaint, investigation, or review with or by any licensing or regulatory authority or other organization that relates, directly or indirectly, to a Provider.

3. TERM AND TERMINATION

3.1. Term. The initial term of this Agreement begins on the Effective Date and shall continue thereafter for a period of one (1) year.

3.2. Termination. This Agreement may be terminated: (i) without cause, by either party upon 60 days written notice to the other party, (ii) by either party in the event a material breach by the other party

is not cured within 5 days after written notice of such breach has been delivered to the breaching party, or (iii) by written mutual agreement of the parties.

3.3. Effect of Termination. Termination of this Agreement shall not release or discharge either party from any obligation, debt, or liability which has previously accrued and remains to be performed upon the date of termination. Providers that have started their assignment will continue to work until the completion of the assignment's duration, and State shall continue to pay ProLink for the work of these Providers until each assignment is completed. Assignments that have been scheduled, but not yet started as of the date of notice of termination, will be cancelled, unless otherwise agreed in writing.

4. FEES AND INVOICES

4.1. Professional Fees. The specific positions and service lines subject to this Agreement, and the fees that State shall pay with respect to Providers selected by State to meet Express Response needs are described in **Exhibit B**. The parties acknowledge and agree that the rates described in **Exhibit B** may increase because of legal or regulatory changes, the qualifications required for the position, the availability of qualified individuals, and other market conditions. No rate increase shall be effective without written consent of State.

4.2. Invoices. ProLink will invoice State for Services provided under this Agreement on a weekly basis based on a work week that begins on Sunday and ends the following Saturday. State shall pay ProLink within the timeframe described in **Exhibit B** without deduction or setoff. Invoices will be supported by the pertinent time sheets or other agreed upon system for documenting time worked by the Providers. All costs, travel, and administrative fees that have been pre-approved by the State, if any, will be billed weekly as incurred.

4.3. Disputed Invoices. If a portion of any invoice is disputed, State shall pay the undisputed portion of the invoice and notify ProLink of the disputed amount and the reasons for State's objection. The parties will then work together to resolve the disputed portion of the invoice. If State fails to provide such notice within 15 days after receipt of the invoice or fails to pay the undisputed portion of the invoice, then the original invoice is deemed payable in full.

5. COMPLIANCE

5.1. Non-Discrimination. With regard to the assignment and treatment of Providers, neither party will discriminate on the basis of race, religion, color, national origin, sex, age, disability, veteran status, sexual orientation, nor any other class or characteristic protected under applicable law. The parties shall not condone or permit any illegal harassment or inappropriate conduct towards, or committed by, the Providers, and shall cooperate in any investigation of such harassment or conduct. The parties further agree that they will not engage in illegal retaliation against Providers.

5.2. Laws and Regulations. Each party shall comply, and cause its employees and subcontractors to comply, with all provisions of federal, state, and local laws that are applicable to the party's operations in connection with this Agreement, including applicable rules and regulations of all governmental agencies having jurisdiction over the provision of Services under this Agreement.

5.3. Medicare Disclosure Requirements. Any discounts, rebates, or other reductions in price issued by ProLink to State under this Agreement may constitute a discount or other reduction in price within the meaning of section I 128B(b)(3)(A) of the Social Security Act (42 U.S.C. §§ 1320a-7b(b)(3)(A)). State acknowledges that it may have an obligation to disclose and reflect accurately such discount to any state or federal program that provides cost or charge-based reimbursement to State for the items to which this

discount applies. State shall report any discounts, rebates, or other reductions in price pursuant to this Agreement as may be required by applicable law.

5.4. List of Excluded Entities. ProLink certifies that ProLink and the Providers are not currently named as an excluded entity or individual on the "List of Excluded Individuals/Entities" of the Department of Health and Human Services Office of the Inspector General ("OIG List"), the "Excluded Parties List System" of the System for Award Management ("EPLS"), the "Specially Designated Nationals List" ("SON List") or the "Foreign Sanctions Evaders List" ("FSE List") of the Office of Foreign Assets Control, or any state debarment or exclusion list, making them ineligible to participate in any federal or state funded programs. ProLink shall immediately notify State if ProLink or a Provider receives notice that it has been named as an excluded entity or individual on any of the aforementioned lists.

5.5. Privacy. Unless otherwise specified, the parties shall comply with all applicable federal and state privacy laws relating to patient health information, including but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and regulations promulgated under these laws. Each Provider shall receive appropriate training as to the duty to maintain the confidentiality of State's patient and proprietary information at all times. State may provide appropriate confidentiality training to Providers, and may designate Providers as members of State's workforce, for HIPAA compliance purposes. Such designation is for purposes of HIPAA compliance only and shall not be construed as altering the obligation of ProLink to pay wages and benefits, administer benefit programs, withhold and remit income and payroll taxes, or meet any other obligation as the employer of the Providers. In the event of any change of law or regulation which prohibits a Provider from being designated as a member of State's workforce, or any action or threatened action by federal, state or local authorities that such designation creates a serious risk of assessment, sanction, penalty or other serious consequence to State or ProLink, the parties agree to negotiate in good faith to reform or modify this Agreement or enter into a separate agreement as necessary to permit the sharing of protected health information with the Provider as necessary to perform the Provider's duties.

5.6. Access to Records. To the extent required by Section 1861(v)(1) of the Social Security Act, until the expiration of four years after the furnishing of Staffing Services under this Agreement, ProLink shall make available upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement and such books, documents, and records as are necessary to certify the nature and extent of the cost hereunder. In the event ProLink carries out any of its duties under this Agreement through a subcontract, for the value or cost of \$10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause placing the same duty on the subcontractor as this Agreement places on ProLink.

5.7. Avoidance of Fraud and Abuse. The parties enter into this Agreement with the intent of conducting their relationship in full compliance with applicable state, local, and federal law, including the Medicare/Medicaid anti-fraud and abuse statutes. Notwithstanding any unanticipated effect of any of the provisions of this Agreement, neither party will intentionally conduct itself under the terms of this Agreement in a manner to constitute a violation of the Medicare and Medicaid fraud and abuse provisions. Further, if legislation is passed, the effect of which would be to hinder State's ability to obtain reimbursement from Medicare/Medicaid due to the existence of this Agreement, or if this Agreement becomes illegal under any subsequent law or regulation, then this Agreement shall terminate immediately.

5.8. Participation in Federal Health Care Programs. ProLink represents and warrants to State that: (i) ProLink is not excluded from participation under any federal health care program, as defined under 42 U.S.C. 1320a-7b(f), for the provision of items or services for which payment may be made under a federal health care program; (ii) ProLink has not arranged or contracted with an employer, agent, or

subcontractor that ProLink knows to be excluded from participation in any federal health care program; and (iii) no final adverse action, as such term is defined under 42 U.S.C. 1320a-7e(g), has occurred or is pending or threatened against any employee, contractor, or Provider engaged to provide items or services under this Agreement (collectively, "Adverse Action"). During the term of this Agreement, ProLink shall notify State of any Adverse Action within ten days of learning of such Adverse Action.

5.9. OSHA/Safety Requirements. State will provide "site specific" information relative to applicable OSHA regulations and State policies and procedures, including location of protective equipment, site procedures, and hazard signage. State will notify ProLink immediately in the event State becomes aware that a Provider has had an occupational exposure, and will cooperate with ProLink in the administration of its post-exposure protocols. ProLink shall instruct Providers that they must immediately report any work-related injury to both ProLink and State. In the event that any Provider is injured while working on State's premises, State shall arrange for drug testing and medical care as directed by ProLink and at ProLink's expense. State shall provide ProLink with the necessary documentation regarding the injury and follow up care in order for the claim to be properly submitted to worker's compensation.

5.10. Tax-Exempt Status. Notwithstanding anything to the contrary, if State is a tax-exempt entity, State may terminate this Agreement if it reasonably determines that its continued participation in this Agreement could threaten the federal tax exemption of State under Internal Revenue Code Section 501(c)(3).

6. ADDITIONAL PROVISIONS

6.1. Hiring Restrictions. ProLink shall not solicit State's employees while this Agreement is in effect and during the one-year period immediately following termination of this Agreement, provided, however, that ProLink may conduct general advertising to which State's employees may respond. State shall not solicit, hire, or employ a Provider as a direct employee, independent contractor, or through any other arrangement, person, entity, or staffing company, whether on a temporary, contractual, permanent, or direct hire basis, prior to the completion of the Provider's assignment or during the one-year period immediately following the presentation of Provider to State or the Provider's completion of an assignment, whichever is later. The restrictions of this Section will not apply to the extent otherwise noted in **Exhibit B**.

6.2. Confidential Information. For purposes of this Agreement, "Confidential Information" means trade secrets, processes, procedures, formulas, pricing structure, or other proprietary information, whether in oral, written, mechanical, or electronic form or other means of data storage, relating to ProLink, State, and their respective States, customers, and employees. Both during the term of this Agreement and after its termination, each party will hold in strictest confidence, will refrain from using for any purpose except in the performance of duties under this Agreement, and will not use or disclose or make accessible to any person or entity, any Confidential Information of the other party without prior written consent unless disclosure is required by law.

6.3. Insurance. ProLink shall maintain the following insurance coverage while this Agreement is in effect: (i) workers' compensation insurance for all Providers, (ii) commercial general liability insurance, including personal injury, contractual liability, and property damage, with limits of \$2 million per incident and \$4 million aggregate, and (iii) professional liability insurance with limits of \$2 million per incident and \$5 million aggregate. State represents and warrants that it maintains adequate levels of general and professional liability insurance for its business and covenants that such insurance will remain fully paid and in effect during the term of this Agreement. Certificates of insurance coverage required by this Agreement will be provided to the other party upon request.

6.4. Indemnification. The State shall be responsible for damage or personal injury resulting from acts or omissions of State employees while acting within the scope of their employment to the extent that the State's liability for such damage or injury has been determined by a court or otherwise agreed to by the State. The State shall pay for such damages and injury to the extent that funds have been authorized and appropriated by the Legislature for such purpose, and the funds have been allocated by the executive budget process.

6.5. Remedies. In the event of breach, alleged breach, or any other dispute related to this Agreement, each party may pursue legal claims at the party's own expense. However, in no event will either party, or any Provider, be liable for special, incidental, punitive, or consequential damages, or lost profits, regardless of the form of the action (whether in contract, tort, negligence, strict liability, or otherwise) and regardless of how characterized.

6.6. Notices. All notices or other communications required under this Agreement will be in writing and will be deemed to have been given, delivered, and received if personally delivered or if sent by a nationally recognized overnight courier, by fax, by electronic mail, or by registered or certified mail, return receipt requested and postage prepaid. Any notice or communication will be deemed to have been delivered and received (i) in the case of personal delivery, on the date of delivery, (ii) in the case of nationally recognized overnight courier, on the next business day after the date when sent, (iii) in the case of fax transmission or electronic mail, when received as evidenced by the sender's written confirmation, and (iv) in the case of mailing, on the fifth business day following the date on which it is mailed. The parties' addresses are below:

If to ProLink:

ProLink Healthcare, LLC
10700 Montgomery Road
Cincinnati, Ohio 45242
Email: contracts@prolinkstaff.com
Fax: 513.489.5301
Phone: 513.489.5300

If to State:

California Department of Public
Health
1616 Capitol Avenue, MS 3202
Sacramento, CA 95814
Email:
Fax:
Phone: 916-445-5411

7. GENERAL PROVISIONS

7.1. Assignment. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and assigns. Neither party may assign this Agreement or delegate its rights, duties, or obligations under this Agreement without the prior written consent of the other party. Additionally, no assignment by ProLink of ProLink's right to compensation under this Agreement shall be effective unless and until the assignment is approved by the State of California. Any assignment or delegation in violation of this Agreement is void.

7.2. Counterparts. This Agreement may be signed in one or more counterparts, each of which will constitute an original, but all of which together will constitute one instrument.

7.3. Severability. Each provision of this Agreement will be considered severable. If any provision is determined to be invalid or unenforceable, then the other provisions of this Agreement will remain in effect.

7.4. Entire Agreement/Amendment/Waiver. This Agreement and the Exhibits is the entire agreement between the parties and supersedes all prior agreements or understandings, oral or written, with

respect to its subject matter. This Agreement may be amended only by a written instrument signed by the parties. The waiver of any provision or breach of this Agreement is not effective unless expressly made in a writing executed by the party to be charged with waiver.

7.5. Governing Law/Venue. This Agreement will be governed by the laws of the State of California without regard to its principles of conflict of laws. Any proceeding, suit, or action seeking to enforce any portion of this Agreement or based on any right arising out of this Agreement will be brought exclusively in the state courts located in Sacramento County and the parties waive any objection to any such proceeding, suit, or action based on venue or jurisdiction.

7.6. Force Majeure. Neither party will be responsible for failure or delay in performance of this Agreement if the failure or delay is due to labor disputes, strikes, fire, riot, war, terrorism, acts of God, or any other causes beyond the control of the nonperforming party.

7.7. Exhibits. The Exhibits attached to this Agreement are incorporated into this Agreement.

7.8. Survival. Article 6 shall survive the termination of this Agreement for any reason.

7.9. Delegation to Health Care Facilities. The parties understand and agree that the Providers will be assigned and will perform their professional services within licensed health care facilities located within the State of California and will not be assigned and will not perform their professional services within State-owned facilities ("Understanding"). Accordingly, the parties understand and agree:

- a. The duties and responsibilities of the State in paragraphs 2.5, 2.6, 2.7, 2.8, 5.1, 5.2, 5.3, 5.5, 5.7, 5.9, 6.1, 6.2, and 6.3 shall be the duties and responsibilities of the licensed health care facilities to which the Providers are assigned and perform their professional services. By executing this Agreement, ProLink agrees and consents to the delegation of the duties in paragraphs 2.5, 2.6, 2.7, 2.8, 5.1, 5.2, 5.3, 5.5, 5.7, 5.9, 6.1, 6.2, and 6.3 from the State to the licensed health care facilities.
- b. The State represents and warrants that it shall not assign Providers to a health care facility unless that health care facility has entered into a written agreement with the State in which the facility specifically accepts the duties delegated to it by subsection 7.9(a).
- c. In addition, the parties understand and agree that any other references in this Agreement or its attached Exhibits to "State" or "Client" shall be construed where necessary to carry out the purposes of the above Understanding.

Intending to be legally bound, the parties have entered this Agreement as of the Effective Date.

California Department of Public Health

ProLink Healthcare LLC

By: _____

By: _____

Name:

Name: Mark Arnett

Title:

Title: CFO

Date:

Date:

Exhibit B
Budget Details and Payment Provisions

1. Invoicing and Payment

- A. In no event shall the Contractor require reimbursement from the State for obligations entered into for costs incurred prior to the commencement date or after the expiration of this Agreement.
- B. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for rates identified in Attachment 1 of this Exhibit.
- C. Invoices shall include the Agreement Number and shall be submitted weekly in arrears to:

CHCQEmergencyInvoices@cdph.ca.gov

Please include Contract# 20-10826 in your email submission.

- D. Electronic Submission:
The State, at its discretion, may designate an alternate invoice submission address. A change in invoice address shall be accomplished via a written notice to the Contractor by State and shall not require an amendment to this agreement.
- E. Invoices shall be accompanied by an itemized invoice, as identified in Attachment A – SOW and contain the following:
 - 1) Be prepared on Contractor letterhead. If invoices are not on produced letterhead, invoices must be signed by an authorized official, employee or agent certifying that the expenditure claimed represent activities performed and are in accordance with Attachment A-SOW.
 - 2) Invoices must be submitted to CDPH either electronically or in hardcopies.
 - 3) Identify the billing and/or performance period covered by the invoice.
 - 4) Itemize costs for the billing period in the same or greater level of detail as indicated in this agreement. Subject to the terms of this agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by the CDPH.

F. Amounts Payable

The amounts payable under this agreement are outlined in Exhibit B Attachment I – Express Response Terms and Conditions, and shall not exceed \$10,000,000.00.

2. 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 be of no further 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.

Exhibit B
Budget Details and Payment Provisions

- 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 Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

3. Timely Submission of Final Invoice

- A. A final undisputed invoice shall be submitted for payment no more than thirty (30) calendar days following the expiration or termination date of this agreement, unless a later or alternate deadline is agreed to in writing by the program contract manager. Said invoice should be clearly marked "Final Invoice", indicating that all payment obligations of the State under this agreement have ceased and that no further payments are due or outstanding. The State may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written State approval of an alternate final invoice submission deadline.

4. Expense Allowability/Fiscal Documentation

- A. Invoices, received from the Contractor and accepted for payment by the State, shall not be deemed evidence of allowable agreement costs.
- B. Contractor shall maintain for review and audit and supply to CDPH upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.
- C. If the allowability of an expense cannot be determined by the State because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed, and payment may be withheld by the State. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.

5. Recovery of Overpayments

- A. Contractor agrees that claims based upon the terms of this agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by the State by one of the following options:
 - 1) Contractor's remittance to the State of the full amount of the audit exception within 30 days following the State's request for repayment;
 - 2) A repayment schedule agreeable between the State and the Contractor.

Exhibit B
Budget Details and Payment Provisions

- B. The State reserves the right to select which option as indicated above in paragraph A will be employed and the Contractor will be notified by the State in writing of the claim procedure to be utilized.
- C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 days after Contractor's receipt of the State's demand for repayment.
- D. If the Contractor has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If the Contractor loses the final administrative appeal, Contractor shall repay, to the State, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues from the Contractor's first receipt of State's notice requesting reimbursement of questioned audit costs or disallowed expenses.

Exhibit B
Attachment I

Express Response Terms and Conditions

1. Reimbursement of Travel Costs. Client shall reimburse ProLink for all transportation including but not limited to airfare and mileage, ("Travel Costs") incurred by ProLink or Providers pursuant to travel to and from this assignment, subject to a maximum of \$1,000 per Provider.

2. Guaranteed Fee. At the time Client places a request with ProLink for a Provider, Client guarantees, and shall pay, reimbursement of all Travel Costs incurred by such Provider and a minimum of 12 billable hours for such Provider. Each time the Client delays the agreed upon start date after the Provider has begun approved travel, Client guarantees, and shall pay, reimbursement of all Travel Costs incurred by such Provider. If the Provider terminates or fails to show for an assignment, then ProLink shall replace such Provider within one week of the termination or no-show, and shall prioritize Client's replacement need above other requests.

3. Cancellation of Assignment. If Client fails to provide at least two weeks' notice prior to cancellation of an assignment, or if cancellation for convenience occurs after the assignment has begun, then Client shall pay ProLink an amount equal to the guaranteed hours for the position for a period of two weeks.

4. Overtime. Client shall pay 1.5 times the applicable Rate for all hours worked by Providers more than 8 hours in one day and 40 hours in one week, subject to state specific requirements.

5. Holidays. Client shall pay 1.5 times the applicable Rate for all hours worked by Providers on the following holidays: New Year's Eve Day, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas Eve Day and Christmas Day.

6. Charge Rate. In the event a Provider is required to perform lead or supervisory duties during the assignment, Client shall pay a charge rate of \$20.00 per hour in addition to the applicable Rate for all such hours worked.

7. On Call/Call Back. Client shall pay uncontrolled on-call hours, defined as hours where Provider is not required to stay on the assigned facility premises, at the on-call rate of \$20.00 per hour. The minimum on-call period is two hours. Client will pay controlled on-call hours, defined as hours where Provider is required to stay on the Facility's premises, at the applicable Rate. If Provider is called back to work for Client while serving in an on-call capacity, the on-call charge will cease and Client shall instead pay ProLink 1.5 times the applicable Rate for the duration of the call back period. The minimum call-back period is two hours.

8. Minimum Work Week. For all Providers, Client shall provide such Providers a guaranteed minimum of 48 scheduled hours per each weekly payroll period as mutually agreed by Client and ProLink. The guaranteed minimum work week applies to all work weeks, including weeks during which orientation is provided, weeks with holidays, and weeks during which there may be unit closures for all or any portion of such week. Should Client not provide the minimum guaranteed hours, Client will be invoiced and shall pay the applicable confirmed Rate for all hours below the minimum for such Provider. The calculation of the guaranteed minimum work week includes regular hours, call back hours, and overtime hours worked, but does not include any on-call time.

9. Invoices. Client shall pay ProLink 30 days net or including a 2% early pay discount if paid

with 15 days from the invoice date. Payments are to be made via ACH or a mutually agreed electronic transfer. A late payment fee of 2% will be assessed, immediately and on a monthly basis thereafter, on any balance that remains unpaid more than 10 days after payment was due. ProLink reserves the right to modify invoice timing and payment due date with Client approval.

10. Quarantined Personnel. In the event a Provider is under facility imposed quarantine and not working, the Client shall be billed for such personnel's guaranteed hours at the Crisis rates included herein for the period of the beginning of the quarantine through a period not to exceed 96 hours, that falls within such individual's assignment period as per their assignment confirmation.

11. Rates and Hiring Fees. Client agrees to pay ProLink for all hours worked by Providers at the rates set forth below ("Rates") for specific service lines. The Rate Tier will be mutually agreed between the Client and ProLink based upon the market rate of clinician pay packages, the quantity of clinicians requested and the Client's timeline for filling the positions.

Service Line or Skill Set	Crisis Response Hourly Bill Rate
RN – ICU, PCU	\$ 200.00
RN – Med Surg/ Tele, All other RN	\$ 180.00
Respiratory Therapist	\$ 180.00

Exhibit D
FEMA PROVISIONS

1. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

- A. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- D. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules,

regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the

compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon

2. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Compliance with the Contract Work Hours and Safety Standards Act.

- A. ***Overtime requirements.*** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. ***Violation; liability for unpaid wages; liquidated damages.*** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- C. ***Withholding for unpaid wages and liquidated damages.*** The State of California shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor

or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

- D. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

3. CLEAN AIR ACT

- A. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.
- B. The contractor agrees to report each violation to the California Air Resources Board and understands and agrees that the California Air Resources Board will, in turn, report each violation as required to assure notification to the Department of Resources Recycling and Recovery, the California Governor's Office of Emergency Services, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
- C. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

4. THE FEDERAL WATER POLLUTION CONTROL ACT

- A. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Sections 1251 et seq.
- B. The contractor agrees to report each violation to the State Water Resources Control Board and understands and agrees that the State Water Resources Control Board will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
- C. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

5. DEBARMENT AND SUSPENSION CLAUSE

- A. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the State of California. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

6. BYRD ANTI-LOBBYING CLAUSE

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date:

7. PROCUREMENT OF RECOVERED MATERIALS

- A. In the performance of this contract the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired-
 - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - ii. Meeting contract performance requirements; or
 - iii. At a reasonable price.
- B. Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

8. ACCESS TO RECORDS

The following access to records requirements apply to this contract:

- A. The Contractor agrees to provide the State of California, the FEMA Administrator, the Controller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever of to copy excerpts and transcriptions as reasonably needed.
- C. The contractor agrees to provide the FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the contract.
- D. In compliance with the Disaster Recovery Act of 2018, the State of California and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

9. DHS SEAL, LOGO, AND FLAGS

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

10. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract only. The contractor will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives.

11. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

12. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The contractor acknowledges the 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's action pertaining to this contract.

I. Recitals

- A. The underlying contract (Agreement), to which this HIPAA Business Associate Addendum is attached to and made a part of, has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), 42 U.S.C. section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations").
- B. The Department of Public Health ("CDPH") wishes to disclose to Business Associate certain information pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI"), including protected health information in electronic media ("ePHI"), under federal law, and personal information ("PI") under state law.
- C. As set forth in the Agreement, Contractor, here and after, is the Business Associate of CDPH acting on CDPH' behalf and provides services, arranges, performs or assists in the performance of functions or activities on behalf of CDPH and creates, receives, maintains, transmits, uses or discloses PHI and PI. CDPH and Business Associate are each a party to the Agreement and are collectively referred to as the "parties."
- D. The purpose of this Addendum is to protect the privacy and security of the PHI and PI that may be created, received, maintained, transmitted, used or disclosed pursuant to the Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act and the HIPAA regulations, including, but not limited to, the requirement that CDPH must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act.
- E. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

II. Definitions

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- C. Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- D. Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C Section 17921 and implementing regulations.
- E. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.
- F. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or

condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR section 160.103.

- G. Privacy Rule shall mean the HIPAA Regulation that is found at 45 CFR Parts 160 and 164.
- H. Personal Information shall have the meaning given to such term in California Civil Code sections 1798.3 and 1798.29..
- I. Protected Health Information means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR section 160.103.
- J. Required by law, as set forth under 45 CFR section 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- K. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- L. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- M. Security Rule shall mean the HIPAA regulation that is found at 45 CFR Parts 160 and 164.
- N. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. section 17932(h), any guidance issued pursuant to such Act and the HIPAA regulations.

III. Terms of Agreement

A. Permitted Uses and Disclosures of PHI by Business Associate

Permitted Uses and Disclosures. Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in the Agreement, for, or on behalf of CDPH, provided that such use or disclosure would not violate the HIPAA regulations, if done by CDPH. Any such use or disclosure must, to the extent practicable, be limited to the limited data set, as defined in 45 CFR section 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, and the HIPAA regulations.

1. ***Specific Use and Disclosure Provisions.*** Except as otherwise indicated in this Addendum, Business Associate may:

- a. ***Use and disclose for management and administration.*** Use and disclose PHI for the proper management and administration of the Business Associate provided that such disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.
- b. ***Provision of Data Aggregation Services.*** Use PHI to provide data aggregation services to CDPH. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of CDPH with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of CDPH.

B. Prohibited Uses and Disclosures

1. Business Associate shall not disclose PHI about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. section 17935(a) and 45 CFR section 164.522(a).
2. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CDPH and as permitted by 42 U.S.C. section 17935(d)(2).

C. Responsibilities of Business Associate

Business Associate agrees:

1. ***Nondisclosure.*** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by the Agreement or as required by law.
2. ***Safeguards.*** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of CDPH, in compliance with 45 CFR sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of PHI other than as provided for by the Agreement. Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR section 164, subpart C, in compliance with 45 CFR section 164.316. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section 3, Security, below. Business Associate will provide CDPH with its current and updated policies.
3. ***Security.*** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
 - a. Complying with all of the data system security precautions listed in Attachment A, the Business Associate Data Security Requirements;

- b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of CDPH under the Agreement;
- c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
- d. In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of the Agreement.
- e. Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with CDPH.

D. *Mitigation of Harmful Effects.* To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.

E. *Business Associate's Agents and Subcontractors.*

- 1. To enter into written agreements with any agents, including subcontractors and vendors, to whom Business Associate provides PHI or PI received from or created or received by Business Associate on behalf of CDPH, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Business Associate with respect to such PHI and PI under this Addendum, and that comply with all applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations.
- 2. In accordance with 45 CFR section 164.504(e)(1)(ii), upon Business Associate's knowledge of a material breach or violation by its subcontractor of the agreement between Business Associate and the subcontractor, Business Associate shall:
 - a. Provide an opportunity for the subcontractor to cure the breach or end the violation and terminate the agreement if the subcontractor does not cure the breach or end the violation within the time specified by CDPH; or
 - b. Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.

F. *Availability of Information to CDPH and Individuals.* To provide access and information:

- 1. To provide access as CDPH may require, and in the time and manner designated by CDPH (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to CDPH (or, as directed by CDPH), to an Individual, in accordance with 45 CFR section 164.524. Designated Record Set means the group of records maintained for CDPH that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for CDPH health plans; or those records used to make decisions about individuals on behalf of CDPH. Business Associate shall use the forms and processes developed by CDPH for this purpose and shall respond to requests for access to records

transmitted by CDPH within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.

2. If Business Associate maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Business Associate shall provide such information in an electronic format to enable CDPH to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e).
3. If Business Associate receives data from CDPH that was provided to CDPH by the Social Security Administration, upon request by CDPH, Business Associate shall provide CDPH with a list of all employees, contractors and agents who have access to the Social Security data, including employees, contractors and agents of its subcontractors and agents.

G. Amendment of PHI. To make any amendment(s) to PHI that CDPH directs or agrees to pursuant to 45 CFR section 164.526, in the time and manner designated by CDPH.

H. Internal Practices. To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from CDPH, or created or received by Business Associate on behalf of CDPH, available to CDPH or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by CDPH or by the Secretary, for purposes of determining CDPH's compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Business Associate, Business Associate shall so certify to CDPH and shall set forth the efforts it made to obtain the information.

I. Documentation of Disclosures. To document and make available to CDPH or (at the direction of CDPH) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 CFR section 164.528 and 42 U.S.C. section 17935(c). If Business Associate maintains electronic health records for CDPH as of January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after January 1, 2014. If Business Associate acquires electronic health records for CDPH after January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.

J. Breaches and Security Incidents. During the term of the Agreement, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:

1. **Notice to CDPH.** (1) To notify CDPH **immediately by telephone call plus email or fax** upon the discovery of a breach of unsecured PHI or PI in electronic media or in any other media if the PHI or PI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to CDPH by the Social Security Administration. (2) To notify CDPH **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI in violation of the Agreement and this Addendum, or potential loss of confidential data affecting the Agreement. A breach shall be treated as discovered by Business Associate as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any

person (other than the person committing the breach) who is an employee, officer or other agent of Business Associate.

Notice shall be provided to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the CDPH ITSD Service Desk. Notice shall be made using the "CDPH Privacy Incident Report" form, including all information known at the time. Business Associate shall use the most current version of this form, which is posted on the CDPH Privacy Office website (www.CDPH.ca.gov).

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI, Business Associate 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.
2. **Investigation and Investigation Report.** To immediately investigate such security incident, breach, or unauthorized access, use or disclosure of PHI or PI. Within 72 hours of the discovery, Business Associate shall submit an updated "CDPH Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Information Security Officer:
3. **Complete Report.** To provide a complete report of the investigation to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "CDPH Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If CDPH requests information in addition to that listed on the "CDPH Privacy Incident Report" form, Business Associate shall make reasonable efforts to provide CDPH with such information. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "CDPH Privacy Incident Report" form. CDPH will review and approve the determination of whether a breach occurred and individual notifications are required, and the corrective action plan.
4. **Notification of Individuals.** If the cause of a breach of PHI or PI is attributable to Business Associate or its subcontractors, agents or vendors, Business Associate shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days. The CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Information Security Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.

5. **Responsibility for Reporting of Breaches.** If the cause of a breach of PHI or PI is attributable to Business Associate or its agents, subcontractors or vendors, Business Associate is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured PHI involves more than 500 residents of the State of California or its jurisdiction, Business Associate shall notify the Secretary of the breach immediately upon discovery of the breach. If Business Associate has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to CDPH in addition to Business Associate, Business Associate shall notify CDPH, and CDPH and Business Associate may take appropriate action to prevent duplicate reporting. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 1, above.
6. **CDPH Contact Information.** To direct communications to the above referenced CDPH staff, the Contractor shall initiate contact as indicated herein. CDPH 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 Addendum or the Agreement to which it is incorporated.

CDPH Program Contract Manager	CDPH Privacy Officer	CDPH Information Security Officer
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer Privacy Office, c/o Office of Legal Services California Department of Public Health 1415 L Street, 5 th Floor Sacramento, CA 95814 Email: privacy@cdph.ca.gov Telephone: (877) 421-9634	Chief Information Security Officer Information Security Office California Department of Public Health P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413 Email: cdphiso@cdph.ca.gov Telephone: IT Service Desk (916) 440-7000 or (800) 579-0874

- K. *Termination of Agreement.*** In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Business Associate knows of a material breach or violation by CDPH of this Addendum, it shall take the following steps:
1. Provide an opportunity for CDPH to cure the breach or end the violation and terminate the Agreement if CDPH does not cure the breach or end the violation within the time specified by Business Associate; or
 2. Immediately terminate the Agreement if CDPH has breached a material term of the Addendum and cure is not possible.
- L. *Due Diligence.*** Business Associate shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Addendum and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Addendum.
- M. *Sanctions and/or Penalties.*** Business Associate understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Business Associate may result in the imposition of sanctions and/or penalties on Business Associate under HIPAA, the HITECH Act and the HIPAA regulations.

IV. Obligations of CDPH

CDPH agrees to:

- A. *Notice of Privacy Practices.*** Provide Business Associate with the Notice of Privacy Practices that CDPH produces in accordance with 45 CFR section 164.520, as well as any changes to such notice.
- B. *Permission by Individuals for Use and Disclosure of PHI.*** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. *Notification of Restrictions.*** Notify the Business Associate of any restriction to the use or disclosure of PHI that CDPH has agreed to in accordance with 45 CFR section 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. *Requests Conflicting with HIPAA Rules.*** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by CDPH.

V. Audits, Inspection and Enforcement

- A.** From time to time, CDPH may inspect the facilities, systems, books and records of Business Associate to monitor compliance with the Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the CDPH Privacy Officer in writing. The fact that CDPH inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does CDPH's:

1. Failure to detect or
 2. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of CDPH' enforcement rights under the Agreement and this Addendum.
- B.** If Business Associate is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Addendum, Business Associate shall notify CDPH and provide CDPH with a copy of any PHI or PI that Business Associate provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI or PI to the Secretary. Business Associate is responsible for any civil penalties assessed due to an audit or investigation of Business Associate, in accordance with 42 U.S.C. section 17934(c).

VI. Termination

- A. *Term.*** The Term of this Addendum shall commence as of the effective date of this Addendum and shall extend beyond the termination of the Agreement and shall terminate when all the PHI provided by CDPH to Business Associate, or created or received by Business Associate on behalf of CDPH, is destroyed or returned to CDPH, in accordance with 45 CFR 164.504(e)(2)(ii)(I).
- B. *Termination for Cause.*** In accordance with 45 CFR section 164.504(e)(1)(ii), upon CDPH' knowledge of a material breach or violation of this Addendum by Business Associate, CDPH shall:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Agreement if Business Associate does not cure the breach or end the violation within the time specified by CDPH; or
 2. Immediately terminate the Agreement if Business Associate has breached a material term of this Addendum and cure is not possible.
- C. *Judicial or Administrative Proceedings.*** Business Associate will notify CDPH if it is named as a defendant in a criminal proceeding for a violation of HIPAA. CDPH may terminate the Agreement if Business Associate is found guilty of a criminal violation of HIPAA. CDPH may terminate the Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- D. *Effect of Termination.*** Upon termination or expiration of the Agreement for any reason, Business Associate shall return or destroy all PHI received from CDPH (or created or received by Business Associate on behalf of CDPH) that Business Associate still maintains in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall notify CDPH of the conditions that make the return or destruction infeasible, and CDPH and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. Business Associate shall continue to extend the protections of this Addendum to such PHI, and shall limit further use 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 subcontractors or agents of Business Associate.

VII. Miscellaneous Provisions

- A. *Disclaimer.*** CDPH makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or

received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

- B. *Amendment.*** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon CDPH' request, Business Associate agrees to promptly enter into negotiations with CDPH concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. CDPH may terminate the Agreement upon thirty (30) days written notice in the event:
1. Business Associate does not promptly enter into negotiations to amend this Addendum when requested by CDPH pursuant to this Section; or
 2. Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that CDPH in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. *Assistance in Litigation or Administrative Proceedings.*** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement, available to CDPH at no cost to CDPH to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CDPH, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- D. *No Third-Party Beneficiaries.*** Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than CDPH or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. *Interpretation.*** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations.
- F. *Regulatory References.*** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- G. *Survival.*** The respective rights and obligations of Business Associate under Section VI.D of this Addendum shall survive the termination or expiration of the Agreement.
- H. *No Waiver of Obligations.*** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

Exhibit E
Business Associate Data Security Requirements

I. Personnel Controls

- A. *Employee Training.*** All workforce members who assist in the performance of functions or activities on behalf of CDPH, or access or disclose CDPH PHI or PI must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination.
- B. *Employee Discipline.*** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- C. *Confidentiality Statement.*** All persons that will be working with CDPH PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to CDPH PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for CDPH inspection for a period of six (6) years following contract termination.
- D. *Background Check.*** Before a member of the workforce may access CDPH PHI or PI, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

II. Technical Security Controls

- A. *Workstation/Laptop encryption.*** All workstations and laptops that process and/or store CDPH PHI or PI must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the CDPH Information Security Office.
- B. *Server Security.*** Servers containing unencrypted CDPH PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- C. *Minimum Necessary.*** Only the minimum necessary amount of CDPH PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- D. *Removable media devices.*** All electronic files that contain CDPH PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- E. *Antivirus software.*** All workstations, laptops and other systems that process and/or store CDPH PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.

- F. Patch Management.** All workstations, laptops and other systems that process and/or store CDPH PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- G. User IDs and Password Controls.** All users must be issued a unique user name for accessing CDPH PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
- Upper case letters (A-Z)
 - Lower case letters (a-z)
 - Arabic numerals (0-9)
 - Non-alphanumeric characters (punctuation symbols)
- H. Data Destruction.** When no longer needed, all CDPH PHI or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the CDPH Information Security Office.
- I. System Timeout.** The system providing access to CDPH PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- J. Warning Banners.** All systems providing access to CDPH PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- K. System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for CDPH PHI or PI, or which alters CDPH PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If CDPH PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- L. Access Controls.** The system providing access to CDPH PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.

- M. *Transmission encryption.*** All data transmissions of CDPH PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI or PI in motion such as website access, file transfer, and E-Mail.
- N. *Intrusion Detection.*** All systems involved in accessing, holding, transporting, and protecting CDPH PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

III. Audit Controls

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

IV. Business Continuity / Disaster Recovery Controls

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

V. Paper Document Controls

- A. *Supervision of Data.*** CDPH PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. CDPH PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- B. *Escorting Visitors.*** Visitors to areas where CDPH PHI or PI is contained shall be escorted and CDPH PHI or PI shall be kept out of sight while visitors are in the area.
- C. *Confidential Destruction.*** CDPH PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.

- D. *Removal of Data.*** CDPH PHI or PI must not be removed from the premises of the Contractor except with express written permission of CDPH.
- E. *Faxing.*** Faxes containing CDPH PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
- F. *Mailing.*** Mailings of CDPH PHI or PI shall be sealed and secured from damage or inappropriate viewing of PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of CDPH PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of CDPH to use another method is obtained.