

STANDARD AGREEMENT

STD. 213www (Rev 06/07)

FOR I.T. GOODS/SERVICES ONLY

		REGISTRATION NUMBER
PURCHASING AUTHORITY NUMBER		AGREEMENT NUMBER
9I-0509-DMH-HQ1		09-30091

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

STATE AGENCY'S NAME

Department of Mental Health – Patton State Hospital

CONTRACTOR'S NAME

County of San Bernardino

2. The term of this Agreement is: July 1, 2009 to June 30, 2011

3. The maximum amount of this Agreement is: \$7,776.00
Seven thousand, seven hundred seventy-six dollars and no cents

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

Exhibit A	—	Scope of Work	3 Pages
Exhibit B	—	Budget Detail	2 Page
Exhibit C*	—	General Terms and Conditions	GTC 307
Exhibit D	—	Special Terms and Conditions	7 Pages
Exhibit E	—	Confidentiality and Information Security Provisions	N/A
Exhibit F	—	Insurance Requirements	N/A
Exhibit G	—	Security Regulations	N/A
Exhibit H**	—	IT General Provisions	GSPD-401 IT
Exhibit I	—	Information Technology Maintenance Special Provisions	4 Pages

*This document is incorporated by reference and can be viewed at www.ols.dgs.ca.gov/Standard+Language

**This document is incorporated by reference and can be viewed at www.pd.dgs.ca.gov/modellang/GeneralProvisions.htm

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

CONTRACTOR		CALIFORNIA Department of General Services Use Only
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) County of San Bernardino		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS 670 E. Gilbert Street, First Floor San Bernardino, CA 92415-0915		
STATE OF CALIFORNIA		
AGENCY NAME Department of Mental Health – Patton State Hospital		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Octavio C. Luna, Executive Director		
ADDRESS 3102 East Highland Avenue Patton, CA 92369-0999		

IN WITNESS WHEREOF, the parties have executed this AGREEMENT to be effective as of the date executed by both parties.

COUNTY OF SAN BERNARDINO

►

Gary Ovitt, Chairman, Board of Supervisors

Dated _____

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD.

Dena M. Smith, Clerk of the Board of Supervisors of the County of San Bernardino.

By _____
Deputy

State of California, Patton State Hospital Police
(State if corporation, company, etc.)

By ► _____
(Authorized Signature)

Dated _____

Title _____

Address 3102 E. Highland Ave. _____

Patton, CA 92369 _____

Approved as to Legal Form
►
Kevin L. Norris, Deputy County Counsel
Date _____

Reviewed as to Affirmative Action
►

Date _____

Reviewed for Processing
►
Agency Administrator/CAO
Date _____

EXHIBIT A

SCOPE OF WORK

Important Disclaimer: This contract shall be of no force or effect pending signature by both parties (State Agency and Contractor). The Contractor is not to begin work until a contract has been made, all approvals have been obtained, and the contract has been fully executed. Should work begin before all approvals are obtained, services will be considered voluntary.

1. San Bernardino County, hereafter referred to as the Contractor, agrees to provide to Patton State Hospital (PSH) online access to specific county managed computer systems via its Wide Area Network (WAN), an integrated electronic network that provides countywide data, voice, and video communications, as described herein.
2. The services shall be performed for Patton State Hospital, 3102 E. Highland Avenue, Patton, CA 92369-0999.
3. The services shall be provided twenty-four hours a day, seven days a week.
4. The project representative during the term of this agreement will be:

State Agency:	Patton State Hospital	Contractor:	San Bernardino County
Name:	Rudy Schultz, Project Coordinator	Name:	Aimee Austin, Representative
Phone:	(909) 425-6455	Phone:	(909) 388-0774
Fax:		Fax:	

Direct All Contractual Inquiries To:

State Agency:	Patton State Hospital	Contractor:	San Bernardino County
Section/Unit:	Contracts Office	Section/Unit	Information Services Department
Attention:	Jennifer Moon	Attention:	Aimee Austin
Address:	3102 E. Highland Ave. Patton, CA 92369-0999	Address:	670 E. Gilbert Street, First Floor San Bernardino, CA 92415-0915
Phone:	(909) 425-7332	Phone:	(909) 388-0774
Fax:	(909) 425-6243	Fax:	

SCOPE OF WORK (Continued)

County of San Bernardino

F A S

STANDARD CONTRACT**FOR COUNTY USE ONLY**

E	☒	New	Vendor Code		Dept.	Contract Number	
M	☐	Change			SC	ISD	A
X	☐	Cancel					
County Department					Dept.	Orgn.	Contractor's License No.
Information Services Department					ISD	IAM	
County Department Contract Representative					Ph. Ext.	Amount of Contract	
Aimee Austin					388-0774	\$7,776	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	Activity	GRC/PROJ/JOB Number	
IAM	WAN	WAN		9800			
Commodity Code				Estimated Payment Total by Fiscal Year			
				FY	Amount	I/D	FY
Project Name				09/10	\$3,888		
WAN CONNECTION				10/11	\$3,888		

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called the County, and

Name

State of California, Patton State Hospital Police

Hereinafter called CUSTOMER

Address

3102 E. Highland Ave.

Patton, CA 92369

Phone

Fed ID or Soc Sec #

(909) 425-7332

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

SAN BERNARDINO COUNTY WIDE AREA NETWORK (WAN)

San Bernardino County ("County") provides online access to specific county managed computer systems it possesses via its Wide Area Network ("WAN"), an integrated electronic network that provides countywide data, voice and video communications. It provides County departments the ability to communicate with each other and it provides reliable access to data housed in County managed information systems. Services include WAN connection, including equipment and configuration of equipment at customer site, overall circuit maintenance to and including the router, 24 hours per day, seven days per week, with a two-hour response time. Specific charges are set forth and attached hereto as Exhibit A, "San Bernardino County Information Services WAN Connection Services and Charges."

I. SERVICES TO BE PROVIDED

The County agrees to provide Customer WAN connectivity to the County's telecommunication network for the purpose of accessing computer information systems managed by the County as authorized by the data owner department.

II. SERVICE CONDITIONS

A. The County has established security practices and closely monitors the WAN to ensure network integrity. Customer agrees to abide by all existing and future security practices, policies and protocols established by the County. Customer understands that the County may perform periodic security audits and the County reserves the right to immediately terminate Customer access if any audit discloses non-compliance with the security practices and policies.

B. Information Services Department (ISD) reserves the right to subcontract for all or part of services.

SCOPE OF WORK (Continued)

- C. Non-County use of the County's Wide Area Network (WAN) services represents a County security vulnerability. Any attempt to access unauthorized applications on the WAN will result in termination of this agreement and legal action may be pursued.
- D. ISD assumes no liability for failure to provide or delay in providing services under this agreement.
- E. Customer is responsible for the costs of the data circuit. Ownership of the circuit will be the County's. The County will order the circuit, monitor it, and will work with the Vendor providing the circuit to resolve any problems. The billing for the circuit will be sent directly to the Customer from the Vendor providing the service. Costs for the circuit are not included in this contract.
- F. ISD will provide coordination for data communications problems, including problem isolation and resolution from the County Central Computer or County's WAN to the last component of ISD-supplied equipment (usually the modem on the end of a data circuit for non-WAN connections or router for WAN connections). Coordination includes working with all necessary vendors in an effort to restore normal data communications in a timely manner. Reporting, tracking, and diagnosing of problems related to customer supplied equipment and software is the responsibility of the customer.
- G. Customer is responsible for the coordination of the isolation and resolution of all problems involving hardware and software not supplied by ISD. Specifically excluded from ISD support are customer-supplied distribution processors, printers, display stations, PCs, Local Area Network (LAN) switches; all customer cabling such as terminal distribution cables (Co-ax, twin-ax, twisted pair, etc.) modem interface cables; all customer supplied jacks, switches, and splitters; distributed software, including mini-based, micro-based, and PC desktop software; and, all consumables such as printer ribbons and paper.
- H. ISD will coordinate a pre-installation site survey identifying all necessary pre-installation site requirements. This service will be limited to the definition of those requirements and the ordering of the data communications or WAN circuits, modems, and WAN equipment (routers, etc.). The customer will be responsible for making all site preparations prior to the installation of data communications or WAN service.

III. EFFECTIVE DATE AND TERMINATION

This agreement shall commence on the first day of the month following the date the Board of Supervisors approves this agreement. This agreement shall remain in effect for two (2) consecutive years or until the County or the Customer terminates the agreement, at the sole discretion of either, by giving sixty (60) days written notice to the other. County may, at its sole discretion, opt not to terminate its services until replacement services are identified and in place; however, in no event shall County's services be continued beyond 120 days of the original written notice. Any such termination date shall coincide with the end of a calendar month. Neither party shall incur any liability to the other by reason of such termination.

IV. RATES AND PAYMENT TERMS

Payment rates and conditions are set forth on Exhibit B, "Budget Detail and Payment Provisions," attached hereto. Services are provided and invoiced on an annual basis starting on the effective date of the agreement. Annual payment shall be due upon receipt of invoice and payable within (60) days of the invoice date. If a change in service levels is requested or required, County will provide to customer a revised Exhibit B, incorporating such change(s) which shall be signed by Customer and returned to County. Customer's subsequent invoice shall be adjusted in accordance with the change(s), on a prorated basis, as necessary.

Exhibit B reflects the rates in effect at the execution of the Agreement. Any subsequent rate change(s) shall become effective on July 1 of the County fiscal year (July 1 through June 30) in which such rate change(s) is adopted as part of the County Budget. County shall provide notice to Customer of pending rate change(s) by providing Customer with a revised Exhibit B reflecting such rate changes.

SCOPE OF WORK (Continued)

Customer's subsequent invoice shall be adjusted in accordance with the rate change(s). Checks shall be made payable to the County of San Bernardino.

Payment address is: Information Services Department
670 E. Gilbert Street, First Floor
San Bernardino, CA 92415-0915
Attn: Administration Services

V. AGREEMENT AUTHORIZATION

The Customer warrants and represents that the individual signing this agreement is a properly authorized representative of the Customer and has the full power and authority to enter into this agreement on the Customer's behalf.

VI. ASSIGNMENT

This agreement, or any interest therein, including any claims for monies due with respect thereto, shall not be assigned, and any such assignment shall be void and without effect.

VII. DEFAULT

If the Customer does not make timely payment of amounts due under this agreement or breaches any term or condition of this agreement, County may declare immediately due and payable the entire unpaid amount, plus all other amounts due hereunder, less any unearned charges. County may also exercise all rights and remedies of a secured party under the Uniform Commercial Code (or other similar law) of the State of California and pursue any other remedies existing in law or in equity.

VIII. INDEMNIFICATION AND INSURANCE

Indemnification – The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Contractor's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

Insurance – "COUNTY and STATE are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this agreement."

IX. GENERAL TERMS AND CONDITIONS

Permits - Customer is responsible for obtaining and paying any costs of all permits, licenses or approvals by any regulatory bodies having jurisdiction over the uses authorized herein, as appropriate.

Waiver - No waiver of a breach of any provision of this agreement shall constitute a waiver of any other breach, or of such provision. Failure of County to enforce at any time, or from time to time, any provision of this agreement shall not be construed as a waiver thereof. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.

SCOPE OF WORK (Continued)

Validity - The invalidity in whole or in part of any provision of this agreement shall not void or affect the validity of any other provision.

Caption and Paragraph Headings - Captions and paragraph headings used herein are for convenience only and are not a part of this agreement and shall not be used in construing it.

Exhibits - All Exhibits attached hereto, if any, are an integral part of this agreement and are incorporated herein by reference.

Entire Agreement - This agreement shall be governed by the laws of the State of California and constitutes the entire agreement between the parties and supersedes all prior negotiations, discussions, and preliminary understanding. This agreement may be amended as County and the Customer mutually agree in writing. Any such amendment must be signed/approved by authorized representatives of the County and Customer.

Notifications - All notices or demands required or permitted to be given or made hereunder shall be in writing and shall be deemed duly given:

Upon actual delivery, if delivery is by hand; or

Upon receipt by the transmitting party of confirmation or answer back if delivery is by telex, telegram or facsimile; or

Three days following delivery into the First Class United States mail.

Each such notice is to be sent to the respective party at the address indicated below or to any other address or person that the respective party may designate by written notice delivered pursuant hereto:

Customer: State of California, Patton State Hospital Police
3102 E. Highland Ave.
Patton, CA 92369
Attn: Jennifer Moon

County: Information Services Department
670 E. Gilbert Street, First Floor
San Bernardino, CA 92415-0915
Attn: Administration Services

Modification

No alteration or variation in the terms of this AGREEMENT shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

X. INFORMATION SERVICES DEPARTMENT AUTHORIZATION

The County's Information Services Department, through its Chief Information Officer or designee, is authorized to discharge all functions ascribed to County in this agreement, except those specifically reserved by law to the Board of Supervisors.

XI. FORCE MAJEURE

County shall not be held liable for any delay or failure in performance of any part of this agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, strikes, labor disputes, embargoes, epidemics, war, terrorist acts, riots, insurrections, fire, explosions, earthquakes, nuclear accidents, floods, power blackouts, brownouts, or surges, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure product or services of other persons or transportation facilities, or acts or omissions of transportation common carriers.

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Revised January 2009

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

1. Invoicing and Payment

- A. This Agreement must be fully executed and approved by the State before any payments for services can be made.
- B. For services satisfactorily rendered, as specified in EXHIBIT A – Scope of Work, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified in Exhibit B, Item #3 – Budget Detail.
- C. Invoices for services to be paid by PSH must be submitted in duplicate within forty-five (45) days after the services were performed and shall include the PSH Agreement Number, Date of Services Performed, Description of Services Provided, Itemization of Costs, and Total Amount Due. Invoice(s) shall be submitted in arrears to:

Patton State Hospital

ATTN: ACCOUNTING/Accounts Payable

3102 E. Highland Avenue
Patton, CA 92369-0999

- D. Payment will be made in accordance with, and within the time specified in Government Code Chapter 4.5, commencing with Section 927.
- G. Amounts to be encumbered for the fiscal years covered by this contract are as follows:

\$3,788.00 in FY 2009/10 (07/01/09 to 06/30/10)

\$3,788.00 in FY 2010/11 (07/01/10 to 06/30/11)

- H. The above amounts may be adjusted between the fiscal years to cover services rendered for a particular fiscal year at the sole discretion of the Fiscal Officer at PSH as long as the total amount of the contract, specified on Page 1, Item #3, is not exceeded.

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 invalid and of no further force and effect. In this event, the State shall have no further liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this Agreement, and the Contractor shall not be obligated to perform any provisions of this Agreement.
- 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 the Contractor to reflect the reduced amount.

BUDGET DETAIL AND PAYMENT PROVISIONS (Continued)

2. Budget Detail

CHARGES FOR SERVICES

Description of Charges	Quantity	TOTAL
Annual Connection Charge	1	\$3,888
One-time WAN setup fee		N/A
Monthly Circuit Cost		Customer responsibility – not included in this contract as it is to be paid directly to provider.

* One time setup fee includes site survey, circuit coordination, equipment setup and administrative charges.

Total for 2009/2010 Fiscal Year	\$3,888.00
Total for 2010/2011 Fiscal Year	\$3,888.00
Grand Total	\$7776.00

PAYMENT SCHEDULE

The County will invoice for these services on the first day of the month following the date the Board of Supervisors approves this agreement. Thereafter, annual invoices will be prepared and mailed to customer on the anniversary date of the agreement. Payment is due upon receipt of the annual invoice and payable within sixty (60) days of invoice date.

Revised March 2009

EXHIBIT D

SPECIAL TERMS AND CONDITIONS

1. Subcontracts

Except for subcontracts identified in the proposal in accordance with the Request for Proposal or Invitation for bid, Contractor shall submit any subcontracts which are proposed to be entered into in connection with this Contract to the State Agency (State) for its prior written approval before entering into the same. No work shall be subcontracted without the prior written approval of the State. Upon the termination of any subcontract, State shall be notified immediately. Any subcontract shall include all the terms and conditions of this Contract and its attachments.

2. Publications and Reports

A. If a publication and/or report is required under this Contract, Contractor shall:

- i. Incorporate any comments or revisions required by the State into any publication or report and shall not publish any material until it receives final State approval.
- ii. Furnish two copies of each publication and report required plus one reproducible original.
- iii. Prepare all illustrations, maps and graphs in a manner which allows the complete illustration to be contained on a single 8-1/2 by 11 page unless specific written approval is given to the contrary.
- iv. Print all graphs, illustrations and printed materials in a single color throughout each publication unless prior State approval is granted.
- v. Place the Contractor's name only on the cover and title page of publications and reports and summaries. Covers and title pages shall read as follows:

**DEPARTMENT OF MENTAL HEALTH
TITLE
By (Contractor)**

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

3. Progress Reports

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

SPECIAL TERMS AND CONDITIONS (Continued)

4. Presentation

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

5. Department of Mental Health Staff

Department of Mental Health staff shall be permitted to work side by side with Contractor's staff to the extent and under conditions as directed by the State Contract Manager. In this connection, Department of Mental Health staff shall be given access to all data, working papers, etc., which Contractor seeks to utilize.

6. Confidentiality of Data and Documents

- A. Contractor shall not disclose data or documents or disseminate the contents of the final or any preliminary report without written permission of the State Contract Manager. However, all public entities shall comply with California Public Records Act (Government Code Sections 6250 et seq.) and the Freedom of Information Act (Title 5 of the United States Code Section 552), as applicable.
- B. Permission to disclose information or documents on one occasion shall not authorize Contractor to further disclose such information or documents on any other occasions except as otherwise provided in the Contract or required by law.
- C. Contractor shall not comment publicly to the press or any other media regarding the data or documents generated, collected, or produced in connection with this contract, or the State's actions on the same, except to the Department of Mental Health staff, Contractor's own personnel involved in the performance of this Contract, or as required by law.
- D. If requested by State, Contractor shall require each of its employees or officers who will be involved in the performance of this Contract to agree to the above terms in a form to be approved by State and shall supply State with evidence thereof.
- E. Each subcontract shall contain the foregoing provisions related to the confidentiality of data and nondisclosure.
- F. After any data or documents submitted has become a part of the public records of the State, Contractor may at its own expense and upon written approval by the State Contract Manager, publish or utilize the same data or documents but shall include the following Notice:

LEGAL NOTICE

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

SPECIAL TERMS AND CONDITIONS (Continued)

7. Provisions Relating to Data

- A. "Data" as used in this Contract means recorded information, regardless of form or characteristics, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or be used to define a design or process; or support a premise or conclusion asserted in any deliverable document called for by this Contract. The data may be graphic or pictorial delineations in media, such as drawings or photographs, charts, tables, mathematical modes, collections or extrapolations of data or information, etc. It may be in machine form, as punched cards, magnetic tape, computer printouts, or may be retained in computer memory.
- B. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Contract. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Contract at State expense, together with complete documentation thereof, shall be treated in the same manner as generated data.
- C. "Deliverable data" is that data which under terms of this Contract is required to be delivered to the State. Such data shall be property of the State.
- D. Prior to the expiration of any legally required retention period and before destroying any data, Contractor shall notify the State of any such contemplated action; and State may within 30 days of said notification determine whether or not this data shall be further preserved. The State shall pay the expense of further preserving this data. State shall have unrestricted reasonable access to the data that is preserved in accordance with this Contract.
- E. Contractor shall use best efforts to furnish competent witnesses to identify such competent witnesses to testify in any court of law regarding data used in or generated under the performance of this Contract.

8. Approval of Product

Each product to be approved under this Contract shall be approved by the Contract Manager. The State's determination as to satisfactory work shall be final absent fraud or mistake.

9. Substitutions

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

10. Notice

Notice to either party shall be given by first class mail properly addressed, postage fully prepaid, to the address beneath the name of each respective party. Such notice shall be effective when received as indicated by post office records or if deemed undeliverable by post office, such notice shall be effective nevertheless 15 days after mailing. Alternatively, notice may be given by personal delivery by any means whatsoever to the party, and such notice shall be deemed effective when delivered.

11. Waiver

No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative; that is, in addition to every other remedy provided therein or by law. The failure of State to enforce at any time the provisions of this Contract, or to require at any time performance by the Contractor of any of the provisions, shall in no way be construed to be a waiver of such provisions not to affect the validity of this Contract or the right of State to enforce said provisions.

SPECIAL TERMS AND CONDITIONS (Continued)

12. Gratuities and Contingency Fees

The State, by written notice to the Contractor, may terminate the right of Contractor to proceed under this Contract if it is found, after notice and hearing by the State, that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the State with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or performing of such contract.

In the event this Contract is terminated as provided in the paragraph above, State shall be entitled (a) to pursue the same remedies against Contractor as it could pursue in the event of the breach of the Contract by the Contractor, and (b) as a predetermined amount of liquidated damages, to exemplary damages in an amount which shall not be less than three times the cost incurred by the Contractor in providing any such gratuities to any such officer or employee.

The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

The Contractor warrants by execution of this Contract that no person or selling agency has been employed or retained to solicit or secure this Contract upon a Contract or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Contractor, for the purpose of securing business. For breach or violation of this warranty, the State shall have the right to annul this Contract without liability, paying only for the values of the work actually returned, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

13. Insurance

Contractor hereby warrants that it carries and shall maintain in full force and effect during the full term of this contract and any extensions to said term:

Sufficient and adequate Worker's Compensation Insurance for all of its employees who shall be engaged in the performance of this Contract and agrees to furnish to State satisfactory evidence thereof at any time the State may request the same; and

Sufficient and adequate Liability Insurance to cover any and all potential liabilities and agrees to furnish to State satisfactory evidence thereof upon request by State.

14. Contract Is Complete

Other than as specified herein, no document or communication passing between the parties hereto shall be deemed a part of this Contract.

15. Captions

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

SPECIAL TERMS AND CONDITIONS (Continued)

16. Public Hearings

If public hearings on the subject matter dealt with in this Contract are held within one year from the contract expiration date, Contractor shall make available to testify the personnel assigned to this Contract at the hourly rates specified in the Contractor's proposed budget. State shall reimburse Contractor for travel of said personnel at the contract rates for such testimony as may be requested by State.

17. DVBE

Unless specifically waived by the Deputy Director of Administrative Services of the Department, Contractor shall comply with the Disabled Veteran Business Enterprises participation goal in accordance with the provisions of Public Contract Code Section 10115 et seq.

18. Force Majeure

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

19. Permits and Licenses

The Contractor shall procure and keep in full force and effect during the term of this Contract all permits, registrations and licenses necessary to accomplish the work specified in this Contract, and give all notices necessary and incident to the lawful prosecution of the work.

The Contractor shall keep informed of, observe, comply with, and cause all of its agents and employees to observe and to comply with all prevailing Federal, State, and local laws, and rules and regulations made pursuant to said Federal, State, and local laws, which in any way affect the conduct of the work of this Contract. If any conflict arises between provisions of the plans and specifications and any such law above referred to, then the Contractor shall immediately notify the State in writing.

20. Litigation

The State, promptly after receiving notice thereof, shall notify the Contractor in writing of the commencement of any claim, suit, or action against the State or its officers or employees for which the contractor must provide indemnification under this Contract. The failure of the State to give such notice, information, authorization or assistance shall not relieve the Contractor of its indemnification obligations. The Contractor shall immediately notify the State of any claim or action against it which affects, or may affect, this Contract, the terms and conditions hereunder, or the State, and shall take such action with respect to said claim or action which is consistent with the terms of this Contract and the interest of the State.

SPECIAL TERMS AND CONDITIONS (Continued)

21. Disputes

Contractor shall first discuss and attempt to resolve any dispute arising under or relating to the performance of this Contract, which is not disposed of by the Contract, informally with the State Contract Manager. If the dispute cannot be disposed of at this level, then the dispute shall be decided by the Department of Mental Health's Deputy Director of Administration. All issues pertaining to this dispute shall be submitted in written statements and addressed to the Deputy Director of Administration, Department of Mental Health, 1600 9th Street, Room 150, Sacramento, California

95814. Such written notice must contain the Contract Number. The decision of the Deputy Director of Administrative Services shall be final and binding to all parties. Within ten days of receipt of the written grievance report from the Contractor, the Deputy Director of Administration Director of Administration or his/her designee, the Contractor shall proceed diligently with the performance of the Contract. Neither the pendency of a dispute, nor its consideration by the Deputy Director of Administration, shall excuse the Contractor from full and timely performance of the services required in accordance with the terms of the contract.

Notwithstanding any other provisions of this Contract, after recourse to the procedure set forth in the paragraph above, any controversy or claim arising out of or relating to this Contract or breach thereof shall be settled by arbitration at the election of either party in accordance with California Public Contract Code Section 10240 et. seq. and judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction thereof.

22. Evaluation of Contractor's Performance

The Contractor's performance under this Contract shall be evaluated by the State after completion of the contract. A copy of the written evaluation shall be maintained in the contract file and may be submitted to the Office of Legal Services, Department of General Services.

23. Travel

Contractor's headquarters for purposes of payment of travel shall be the city designated in the signature block unless otherwise specified in the contract.

For travel necessary to the performance of this Contract, contractor shall use and submit travel reimbursement forms provided by the Department. All reimbursements shall be made in accordance with, and shall not exceed the rates authorized by, the State Administrative Manual and the Policies and Procedures of the Department. All requests to exceed any base reimbursement rate established in the State Administrative Manual or the Policies and Procedures of the Department must be made and approved prior to the date of travel and must be submitted in writing to the State's Contract Manager.

24. Termination

Unless otherwise specified, either party may terminate this Contract by giving 30 days written notice to the other party. The notice of termination shall specify the effective date of termination.

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

- A. Stop work on the date specified in the notice.
- B. Place no further orders or enter into any further subcontracts for materials, services or facilities except as necessary to complete work under the Contract up to effective date of termination.

SPECIAL TERMS AND CONDITIONS (Continued)

- C. Terminate all orders and subcontracts;
- D. Promptly take all other reasonable and feasible steps to minimize any additional cost, loss, or expenditure associated with work terminated, including, but not limited to reasonable settlement of all outstanding liability and claims arising out of termination of orders and subcontracts;
- E. Deliver or make available to the Department all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor under this Contract, whether completed, partially completed, or in progress.

In the event of termination, an equitable adjustment in the price provided for this Contract shall be made. Such adjustment shall include reasonable compensation for all services rendered, materials supplies, and expenses incurred pursuant to this Contract prior to the effective date of termination.

25. Confidentiality and Information Security Provisions

- A. The Contractor shall comply with applicable laws and regulations, including but not limited to Sections 14100.2 and 5328 et seq. of the Welfare and Institutions Code, Section 431.300 et seq. of Title 42, Code of Federal Regulations, and the Health Insurance Portability and Accountability Act (HIPAA), and its implementing regulations (including but not limited to Title 45, CFR, Parts 160, 162 and 164) regarding the confidentiality and security of individually identifiable health information (IIHI).
- B. Nondisclosure

Contractor shall not use or disclose confidential, individually identifiable, or sensitive information other than as permitted or required by the Contract and as required by law.

26. Audits, Inspection and Enforcement

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

SPECIAL TERMS AND CONDITIONS (Continued)

27. Use of State Funds

Contractor, including its officers and members, shall not use funds received from the Department pursuant to this contract to support or pay for costs or expenses related to the following:

- A. Campaigning or other partisan activities to advocate for either the election or defeat of any candidate for elective office, or for or against the passage of any proposition or ballot measure; or,
- B. Lobbying for either the passage or defeat of any legislation.

This provision is not intended and shall not be construed to limit any expression of a view, opinion, or position of any member of Contractor as an individual or private citizens, as long as state funds are not used; nor does this provision limit Contractor from merely reporting the results of a poll or survey of its membership.

28. Drug-Free Workplace Certification

Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and shall provide a drug-free workplace.

29. Conflict of Interest Certification

In accordance with State laws and Departmental policy, no employees (including contractors) shall participate in incompatible activities, which are in conflict with their job duties. In addition, State law requires employees whose positions are designated in the Department's Conflict of Interest Code to file statements of economic interest. Employees whose positions have been designated will be notified by the Department if a statement is required.

In signing this contract, I certify that I have read and understand GOVERNMENT CODE 19990.

Revised January 2003

EXHIBIT I

STATE MODEL INFORMATION TECHNOLOGY MAINTENANCE SPECIAL PROVISIONS

The following terms and conditions are superseded and replaced by any alternate or inconsistent terms and conditions in the Statement of Work.

1. Maintenance of Equipment

The Contractor is responsible under this Contract to maintain the Equipment identified in the Statement of Work. The Contractor shall keep the Equipment in good operating condition and shall always be responsive to the maintenance requirements of the State. Equipment maintenance shall be provided in accordance with this Contract, with the maintenance charges, Period of Maintenance Coverage, locations, etc. listed in the Statement of Work.

2. Exclusions

A. Maintenance service does not include:

- i. Electrical work external to the Machines or maintenance of accessories, alterations, Attachments, or other devices not listed in the Statement of Work.
- ii. Repair of damage or increase in service time caused by: accident; disaster, which shall include, but not be limited to, fire, flood, water, wind, and lightning; transportation; neglect, misuse, fault or negligence of the State; and alterations, which shall include, but not be limited to, any deviation from Contractor's physical, mechanical, or electrical Machine design, and Attachments.
- iii. Repair of damage or increase in service time resulting from failure to provide a suitable installation environment with all facilities prescribed by the appropriate Contractor Installation Manual—Physical Planning (including, but not limited to, failure of, or failure to provide adequate electrical power, air conditioning or humidity control).
- iv. Repair of damage or increase in service time attributable to the use of the Machines for other than the data processing purpose for which it was acquired.
- v. Furnishing platens, supplies or accessories; painting or refinishing the Machines or furnishing material therefore; inspecting Machines altered by other than Contractor; making specification changes or performing services connected with the relocation of Machines; or adding or removing accessories, Attachments or other devices.
- vi. Such service which is impractical for Contractor to render because of alterations or connection by mechanical or electrical means to another Machine.
- vii. Repair of damage, replacement of parts (due to other than normal wear) or repetitive service calls caused by the use of supplies or materials not meeting Contractor's specifications for such supplies or materials.
- viii. Repair of damage or increase in service time caused by conversion from one Contractor model to another or the installation or removal of a Contractor feature whenever any of the foregoing was performed by other than the Contractor.
- ix. Repair or maintenance by Contractor that is required to restore Equipment to proper operating condition after any person other than Contractor's employee had performed maintenance or otherwise repaired an item of Equipment.

STATE MODEL INFORMATION TECHNOLOGY MAINTENANCE SPECIAL PROVISIONS (Continued)

- B. The Contractor may be required to perform repair or maintenance on excluded items in paragraph a, above. An additional charge for such repair or maintenance shall be at the established Contract rates in the Statement of Work, or if not stated, be at Contractor's applicable time and material rates and terms then in effect. The procedures for authorization of such maintenance may be the same as those for Remedial Maintenance outside of the Principle Period of Maintenance.

3. Responsibilities of the Contractor

- A. This maintenance service includes the following and may be further described in the Statement of Work:
 - i. Scheduled Preventive Maintenance based upon the specific needs of the individual Machines as determined by manufacturer.
 - ii. Unscheduled, on-call Remedial Maintenance. Such maintenance will include lubrication, adjustments, and replacement of maintenance parts deemed necessary by the Contractor.
- B. Maintenance parts will be furnished by Contractor and will be new or equivalent to new in performance when used in these Machines. Replaced maintenance parts become the property of the Contractor.
- C. Preventive maintenance shall be performed on a schedule which is mutually acceptable to the State and the Contractor, which is consistent with the State's operating requirements, and which is based upon the specific needs of the Equipment as determined by the manufacturer. Such schedules shall be in writing and shall specify the frequency and duration of Preventive Maintenance for the Equipment in the Statement of Work.
- D. Remedial Maintenance shall be commenced promptly after notification by an authorized State representative that Equipment and/or Software is inoperative.

4. Responsibilities of the State

- A. The State shall provide an appropriate operating environment, including temperature, humidity, and electrical power, in accordance with the environmental requirements contained in the Contractor's published specifications for the Equipment listed on the Statement of Work.
- B. Unless mutually agreed to by the Contractor and the State, State personnel will not perform maintenance or attempt repairs to the Equipment while such Equipment is governed by the terms of this Contract.
- C. Subject to the State's security regulations, the Contractor shall have full and free access to the Machines to provide service thereon.

5. Maintenance Coverage

- A. Period of Maintenance Coverage:
 - i. The State may select a period or periods of maintenance coverage, as stated in the Statement of Work, in accordance with the following:
 - a. A minimum monthly maintenance charge entitles the State to maintenance coverage during the Principal Period of Maintenance.
 - b. The State may select in lieu of the hours available for the minimum monthly maintenance charge, one or more of the optional periods of maintenance coverage for an additional charge as shown in the Statement of Work.

STATE MODEL INFORMATION TECHNOLOGY MAINTENANCE SPECIAL PROVISIONS (Continued)

- ii. The hours of maintenance coverage for a Machine on Monday through Friday shall be the same each day; and the hours on Saturday and Sunday shall be the same hours on all Saturdays or Sundays. All Machines covered under this Contract must have a simultaneous span of time within the selected periods of maintenance coverage, at least equal to the shortest period offered for any Machine in the System.
- iii. The State may change its selected Period of Maintenance Coverage by giving Contractor fifteen (15) days prior written notice.

B. Preventive Maintenance (scheduled)

Preventive maintenance can either be performed within or outside of the Principal Period of Maintenance (PPM). An additional charge may be made for Preventive Maintenance to be performed outside of the PPM, as set forth in the Statement of Work. No additional charge shall be made for Preventive Maintenance that is to be performed within the PPM.

C. Remedial Maintenance (unscheduled)

- i. Remedial Maintenance shall be performed after notification by authorized State personnel that the Equipment is malfunctioning.
- ii. The Contractor shall provide the State with a designated point of contact and will initiate the Remedial Maintenance.
- iii. There shall be no additional maintenance charges for:
 - a. Remedial Maintenance during the Period of Maintenance Coverage unless the Remedial Maintenance is due to the fault or negligence of the State.
 - b. Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, etc., after a service call has been commenced.
 - c. Remedial Maintenance required because the scheduled Preventive Maintenance preceding the malfunction had not been performed, unless the State had failed to provide access to the Equipment.
 - d. For time of delay beyond the PPM, Contractor shall continue to perform maintenance for the same amount of time outside the covered period without additional charge to the State.
 - e. The first hour of work performed when Remedial Maintenance service is requested during the covered Period of Maintenance and the actual work is begun outside such period.

6. Maintenance Charges

- A. The monthly maintenance charges described include all maintenance costs, and the State will pay no additional charges unless specifically set forth in this Contract. Maintenance rates shall be firm for the Contract period subject to any maximum annual maintenance escalation as set forth in the Statement of Work.
- B. Maintenance charges for fractions of a calendar month shall be computed at the rate of 1/30 of the applicable Total Monthly Maintenance Charge, for each day maintenance was provided.
- C. There will be no charge for travel expense associated with maintenance service or programming service under this Contract except that actual travel expenses will be charged in those instances where the site at which the Machine is located is not normally accessible by private automobile or scheduled public transportation.

STATE MODEL INFORMATION TECHNOLOGY MAINTENANCE SPECIAL PROVISIONS (Continued)

- D. All maintenance and other service activities (including but not limited to activities relating to pre-installation planning, inspections, relocation of Machines, engineering changes and altered programming) which may be made available by Contractor to the State at no additional charge or at Contractor's then applicable time and material charges, in connection with any Machines or programming supplied under this Contract, shall be subject to the terms and conditions of this Contract, unless such activities are provided under another written agreement signed by the State and the Contractor.

7. Maintenance Credit for Inoperative Machines

The Contractor shall grant a proportionate maintenance credit on a Machine shown in the Statement of Work when the Machine is inoperative for consecutive scheduled work periods totaling 24 hours from the time the State notifies the Contractor the Machine was inoperative, provided (1) the Machine became inoperative through no fault of the State, and (2) the breakdown was attributable to Equipment Failure. The credits to be granted by the Contractor to the State shall be as reflected in the Statement of Work.

8. Engineering Changes

Engineering changes, determined applicable by Contractor, will be controlled and installed by Contractor on Equipment covered by this contract. The State may elect to have only mandatory changes, as determined by Contractor, installed on Machines so designated. A written notice of this election must be provided to the Contractor for confirmation. There shall be no charge for engineering changes made. Any Contractor-initiated change shall be installed at a time mutually agreeable to the State and the Contractor. Contractor reserves the right to charge, at its then current time and material rates, for additional service time and materials required due to non-installation of applicable engineering changes after Contractor has made a reasonable effort to secure time to install such changes.

9. Relocation of Equipment

- A. In the event the Equipment being maintained under the terms and conditions of this Contract is moved to another location within the State of California, the Contractor shall continue to maintain the Equipment at the new location.
- B. The charges of the Contractor to dismantle and pack the Equipment and installation at the new location shall be at the rates set forth in the Statement of Work. The State agrees to pay all costs incidental to any move, including costs for packing, crating, rigging, transportation, unpacking, uncrating, insurance, installation, and State and local sales tax, if any.
- C. If Contractor is responsible for the move, no re-certification charges to confirm continued maintenance eligibility will be applicable. If the move is conducted by other than Contractor, State agrees to pay re-certification charges to Contractor at rates set forth in the Statement of Work.

10. Termination

Notwithstanding the Termination for Convenience provisions contained in the General Provisions, upon thirty (30) days' written notification to the Contractor, State may terminate, at no cost to the State, maintenance for all or any portion of the Equipment identified in the Statement of Work.