

1 ARIZONA DEPARTMENT OF HEALTH SERVICES
2 PRIVATE SECTOR LEASE
3
4

5 **LESSOR:** ARIZONA DEPARTMENT OF HEALTH SERVICES, AN AGENCY OF
6 THE STATE OF ARIZONA
7

8 **LESSEE:** _____
9 -----

10 **THIS LEASE** made the ____ of ____, 20____ (“Lease”) by and between **THE ARIZONA**
11 **DEPARTMENT OF HEALTH SERVICES**, an Agency of the State of Arizona, hereinafter called
12 “Lessor” and _____, a _____, hereinafter called “Lessee”.
13

14 **1. PREMISES**
15

16 Lessor hereby leases to Lessee and Lessee hereby leases from Lessor those Premises solely
17 for the purposes described in Section 12 below, hereinafter called "Premises", consisting of
18 an approximately 17,500 square foot (+/-) building commonly referred to as the Birch
19 Building (“Birch Building”) facing _____ Street (excepting therefrom the Computer Housing
20 defined below), together with a certain parking area immediately adjacent to the Birch
21 Building, located on the Arizona State Hospital (“ASH”) property at _____,
22 Phoenix, Arizona (“ASH Property”). The Premises are shown on **Exhibit “A”**, which is
23 attached hereto and incorporated herein by reference, exclusive of the Computer Housing
24 (defined below) also shown on **Exhibit “A”**. The Premises are currently configured for 26
25 single occupancy units that are approximately half of the Birch Building as well as space
26 used for offices, common areas, programmatic office space, shared restroom facilities with
27 showers, and housing for computer technology hardware and wiring, collectively “Existing
28 Configuration”). The Birch Building is, or will be at the time of Lessee’s occupancy,
29 physically separate and secured away from all other ASH facilities located on the ASH
30 Property. As noted above, the Existing Configuration houses certain computer technology
31 hardware and wiring required for the operation of the Birch Building and the other ASH
32 facilities located on the ASH Property that existed prior to delivery of the Premises to
33 Lessee (“Computer Housing”).
34

35 The Arizona Department of Housing (“ADOH”), which administers Housing Trust Funds
36 (“HTF”), has allocated funds not to exceed THREE MILLION and No/100 Dollars
37 (\$3,000,000.00) from its Housing Trust Funds to renovate and remodel the Birch Building to
38 accommodate up to fifty (50) units and other programmatic space needs, i.e., office space,
39 clinical workspace, showers, kitchen, and Lessee’s IT Housing to be used by Lessee for the
40 purposes set forth in Section 12 below (“Reconfigured Space”), exclusive of the Computer
41 Housing. The Reconfigured Space of the Birch Building constituting the Premises to be
42 used by Lessee for the purposes set forth in Section 12 below is depicted in **Exhibit “B”**,
43 attached hereto and incorporated herein by reference. Upon and post-delivery of Premises
44 to Lessee, the Computer Housing will house computer technology hardware and wiring

45 required for the operation of ASH facilities exclusive of the Premises. Lessee agrees to
46 provide Lessor 24-hour unimpeded access to the Computer Housing for maintenance,
47 repair, emergency or updating purposes of and/or for Lessor's technology.
48

49 **2. TERM**

50
51 The term of this Lease is for a period of FIVE (5) years, commencing _____, 20____ and
52 expiring on _____, 20____; notwithstanding the foregoing, Lessee may terminate this Lease
53 at the end of each year of the FIVE (5) year term by giving Lessor a minimum of sixty (60)
54 days prior written notice of Lessee's intent to terminate the Lease.
55

56 Lessee shall not be liable for any rent until such time as ADOH delivers notice to Lessee of
57 the completion of the improvements comprising the Reconfigured Space, which shall
58 constitute delivery by Lessor of possession of the Premises ("Completion Notice"). Rent
59 shall begin on the date ADOH delivers the Completion Notice to Lessee and shall be
60 payable within two (2) days following delivery to Lessee of the Completion Notice. If the
61 Lessee takes possession on other than the first day of a calendar month, rent for the
62 remainder of that month shall be paid by Lessee on a pro rata basis.
63

64 **3. RENT**

65
66 Lessee agrees to pay and Lessor agrees to accept monthly rental payments in the amount of
67 \$_____, based upon the per square foot base rental rate as shown below, at such a place as
68 may be designated from time to time by Lessor ("Base Rent"):
69

70 Base Rent: **\$14.50** per square foot per year of the Premises (plus a
71 cleaning, damage and security deposit in the amount of
72 \$____ required by Lessor to be paid prior to Lessee's
73 occupancy). Rent is due on the first day of every month;
74 Rent is late if it is not received by 5 p.m. on the fifth (5th)
75 day of the month. All late payments will accrue a late fee
76 of \$____ and must be paid before the next month's Rent is
77 due.
78

79 This is a triple net Lease which means that, Lessee is responsible for and shall pay all of the
80 costs and expenses related to the Premises as follows:
81

- 82 1. Base Rent payable to Lessor; and
83 2. All other costs and expenses related to the Premises that are contracted for by Lessee
84 and payable by Lessee to third parties providing that service, including but not limited to:
85

86 Any applicable taxes, all utilities (including but not limited to water, sewer, gas, electricity,
87 heating and air conditioning, and all hook-up fees associated with the provision of utilities
88 to the Reconfigured Space) consumed on the Premises occupied by Lessee, telephone

89 service, pest control, food or meal services, telecom service, internet/WI FI service, janitorial
90 services, recycling costs, insurance, maintenance costs, management costs, repair costs,
91 waste removal charges (including all biohazardous waste removal charges), parking
92 maintenance charges, and security costs (the foregoing shall be collectively referred to as
93 "Lessee Operating Expenses"). Lessee is responsible for obtaining, and paying the cost for
94 obtaining, all of the foregoing services to the Reconfigured Space, including making all
95 necessary deposits therefore, and Lessor has no obligation therefore other than to provide
96 permission to the providers as needed to obtain such services.
97

98 Lessee shall pay a refundable cleaning, damage and security deposit in the amount of
99 \$_____. Lessee shall at its own expense and at all times maintain the Premises in a
100 clean and sanitary manner including all equipment, appliances, furniture and furnishings
101 therein and shall surrender the Premises, at termination hereof, in as good condition as
102 received, normal wear and tear excepted. If the condition is the same as when originally
103 occupied, the refundable cleaning, damage and security deposit will be returned to Lessee
104 in a timely manner as long as no funds are owed to Lessor, which will be determined after
105 the Premises are vacated and keys have been returned to Lessor.
106

107 **4. TERMINATION; SURRENDER OF PREMISES**

108
109 A. Upon termination of the Lease, Lessee shall surrender the Premises to Lessor in
110 its then current condition, with reasonable wear and tear excepted, and after the Premises
111 have been cleaned by a reputable cleaning service approved by Lessor, in its reasonable
112 discretion. Such cleaning shall be performed in accordance with the highest industry
113 standards for sanitizing COVID-19 contaminants and Lessee shall obtain clean
114 environmental certificates relating to same. Lessor must be satisfied with the cleaning of
115 the Premises before any security deposit will be released to the Lessee.
116

117 B. At any time, the parties may agree to mutually terminate the Lease in writing.
118 The effective date of the mutual termination will be negotiated by the parties to ensure that
119 the Lessee has a minimum of thirty (30) days to make reasonable efforts to rehouse, relocate,
120 or make other arrangements for the exiting of the Participants, defined below, from the
121 Premises.
122

123 C. The Lessor reserves the right to terminate the Lease in whole or in part due to
124 the failure of the Lessee or any service provider or other contractor of Lessee to comply
125 with any material obligations, terms or conditions of the Lease. In the event the Lessor
126 terminates the Lease in whole or in part as provided in this paragraph, the Lessee shall be
127 liable to the Lessor for any unpaid rent or other costs, expenses, or damages due the Lessor
128 under the Lease. Upon such termination, the Lessee will have thirty (30) days to make
129 reasonable efforts to rehouse, relocate, or make other arrangements for the exiting of the
130 Participants from the Premises.
131

132 D. It is understood that upon Lease termination, the Lessee will remain responsible

133 to make reasonable efforts to rehouse, relocate, or make other arrangements for the exiting
134 of the Participants from the Premises. The parties acknowledge that the rights and
135 obligations set forth in Paragraph 4 shall survive termination of the Lease.
136

137 **5. UNAVAILABILITY OF FUNDS**

138
139 In the event no funds or insufficient funds are available or allocated to Lessor for any
140 payment that may be due by Lessor under this Lease, including no funds or insufficient
141 funds resulting from an act of the Legislature, for any portion of the term or renewal of this
142 Lease, Lessor will be without further obligation under this Lease. Lessor will advise Lessee
143 at any time it appears that there may be insufficient funds to perform Lessor's obligations
144 under the Lease. No liability shall accrue to the Lessor or any other agency of the State of
145 Arizona in the event the provision of this paragraph is exercised, and neither the Lessor or
146 any other agency of the State of Arizona shall be obligated or liable for any future payments
147 or for any damages as a result of termination under this paragraph.
148

149 **6. REPAIRS, REPLACEMENT AND MAINTENANCE TO AND/OR OF ADJACENT**
150 **AREAS**

151
152 Lessee, at no cost to Lessor, shall promptly make or perform all repairs, replacements, and
153 maintenance to the Premises, including but not limited to all common areas, parking areas,
154 the structural systems, roofs, lighting fixture ballasts, exterior walls, heating, plumbing, air
155 conditioning, ventilation system filters, exterior doors, windows, corridors and surrounding
156 grounds. For all major system repairs (structural, electrical, A/C/Heat, roof, major
157 plumbing), Lessee must give prior notice of the intended repair to Lessor for Lessor's
158 approval before starting the repair. Lessor shall not be liable or responsible for faulty
159 repairs caused in whole or in part by the negligence of Lessee, its employees, contractors or
160 clients.
161

162 **7. UTILITY AND OTHER CHARGES**

163
164 Lessor shall not be liable to Lessee for any stoppage or interruption of the services and
165 utilities described in Paragraph 3 above as a result of causes outside Lessor's control.
166

167 **8. PARKING**

168
169 Lessee shall have the right to use surface parking areas serving the Birch Building, as
170 described on Exhibit "A" at no additional cost to Lessee, on an exclusive, first come first
171 serve basis to Lessee's employees, agents, guests and invitees. Use of the parking area shall
172 be subject to such reasonable rules and regulations as may be established by Lessor. Lessor
173 shall not construct any additions to the building site or take any action that would have the
174 effect of reducing the available parking as depicted on Exhibit "A", unless equivalent
175 replacement parking satisfactory to Lessee, in its sole discretion, is made available to Lessee.
176 Lessee accepts the designated parking area in an "as-is" condition.

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9. MAINTENANCE; IMPROVEMENTS; ALTERATIONS; JANITORIAL SERVICES

Lessee accepts the Premises, in its Reconfigured Space, in “as is” “where is” condition. Lessee shall operate and maintain the Premises, including the lobby areas and hallways, in good, clean condition. Lessee shall not make any alterations, additions or improvements without the prior written approval of Lessor, in its sole and absolute discretion. All alterations, additions or improvements shall be made by Lessee at Lessee’s sole cost and expense and shall at once become a part of the realty and belong to Lessor except moveable furniture.

Lessee shall safely and appropriately remove all trash, rubbish, medical waste and other discarded material resulting from the use of the Premises at its own cost and expense.

10. INTENTIONALLY OMITTED

11. OFFSET

In the event the Lessee fails to maintain the Premises or the designated parking area in a clean, orderly, and safe condition, or fails to provide repairs, maintenance, or other services as required herein, or fails to pay rent or other expenses as may be required herein, then, in addition to all other rights and remedies which the Lessor may be entitled, the Lessor may make written demand upon the Lessee to provide such service. If the foregoing are not provided within ten (10) days after written demand has been mailed by the Lessor to the Lessee then, in addition to all other rights or remedies that the Lessor may have, the Lessor may obtain such services and add such costs to the Rent due from Lessee under Section 3 above, or in the alternative, Lessor may pursue any and all remedies against Lessee available at law or equity. The rights and obligations set forth in this Paragraph 11 shall survive termination of the Lease.

12. PERMITTED USE OF PREMISES

The Premises are leased to Lessee for the purpose of operating up to fifty (50) units of transitional shelter and for the purpose of permitting the provision of Supportive Services, defined below, for persons of 18 years or older regardless of gender, with mental health conditions, including persons determined seriously mentally ill, who are experiencing homelessness (“Participants”). Participants may have co-occurring disabilities or service needs in addition to mental health needs. Lessee shall allow Participants to receive Supportive Services supplied by those provider(s) reasonably approved by Lessee on the Premises. The Supportive Services that may be provided to Participants are described on Exhibit “C”, which is attached hereto and incorporated herein by reference (“Supportive Services”). While on the grounds of ASH, Lessee agrees to be responsible for the actions of the Participants or their visitors, and Lessee’s employees or agents, including but not limited to any service providers or contractors.

221
222 Lessee provided ADOH and the Arizona Department of Administration (“ADOA”) with
223 recommended improvements to the Existing Configuration for the purpose of constructing
224 the Reconfigured Space. Lessee understands and agrees that the recommended
225 improvements were approved by ADOH and ADOA in their sole discretion. Lessee agrees
226 to comply with applicable laws, ordinances, regulations and building codes, now or
227 hereafter in force in connection with its use of the Premises, and will obtain any permits,
228 licenses or regulatory approvals necessary for Lessee’s use and occupancy of the Premises.
229 Lessee shall not commit or suffer the commission of any waste, overload any floor of the
230 Premises beyond the load limit established by Lessor, or knowingly permit any explosives
231 or hazardous substance in the Premises.

232
233 **13. IT AND OTHER EQUIPMENT**

234
235 The Reconfigured Space contains housing for computer technology hardware and wiring
236 relating specifically to Lessee’s use of the Premises (“Lessee’s IT Housing”). Lessee shall
237 provide all data, telecom and networking technology and hardware required for operation
238 of the transitional shell described in Paragraph 12.

239
240 **14. COMPLIANCE WITH THE LAW**

241
242 The Lessee shall promptly execute and comply with all statutes, rules, orders, building
243 codes, fire codes, ordinances, requirements and regulations of the City, County, State and
244 Federal governments, including O.S.H.A., the Americans with Disabilities Act of 1990 (42
245 USC Sections 12101 through 12213 and 27 USC Sections 225,611), Arizonans with
246 Disabilities Act of 1992 (A.R.S. § 41-1492 et seq) and their underlying regulations and rules,
247 which are applicable to the Premises. Nothing herein contained shall be construed to
248 restrict the Lessee from contesting the applicability of any such regulations, rule or
249 ordinance, provided the Lessee indemnifies the Lessor to its reasonable satisfaction against
250 the consequences of non-compliance during the period of dispute.

251
252 The Lessee shall promptly execute and comply with A.R.S. § 41-4401, immigration laws and
253 E-Verify requirement. The Lessee warrants compliance with all federal immigration laws
254 and regulations relating to employee and warrants compliance with A.R.S. § 23-214.(A.) A
255 breach of Lessee’s warranty regarding compliance with immigration laws and regulations
256 shall be deemed a material breach of this Lease. The Lessee may be subject to penalties up
257 to, and including, termination of this Lease. The Lessor retains the legal right to inspect the
258 papers of any employee who works to perform obligations set forth in this Lease to ensure
259 the Lessee or its sub-contractor(s) are in compliance with Lessee’s warranty under this
260 paragraph.

261
262 **15. EMINENT DOMAIN**

263
264 In the event the building, the land on which it is located or any portion of the Premises is

265 taken under, or a conveyance is made under the threat of condemnation proceedings,
266 Lessee will be entitled to recover the value of its leasehold interest and all personal
267 property, all fixtures and improvements installed by Lessee.
268

269 **16. ASSIGNMENT AND SUBLEASE**
270

271 Lessee shall not assign, transfer, or encumber this Lease nor sublet the Premises or any
272 portion thereof without the prior written consent of Lessor, which shall not be unreasonably
273 withheld and shall not release Lessee from any of Lessee's obligations hereunder or be
274 deemed to be a consent to any subsequent assignment, subletting, occupation or use. Lessor
275 hereby acknowledges that the Premises, and services provided therein, may be operated by
276 service provider(s) designated by Lessee, with the prior written approval of Lessor, which
277 shall not constitute an assignment or sublease of the Premises. Consent by the Lessor does
278 not mean that Lessor is responsible or liable for any actions or nonactions of Lessee or by
279 any service provider or sublessee operating on or off the Premises.
280

281 **17. DESTRUCTION OF THE PREMISES**
282

283 In the event the Premises are totally destroyed, this Lease shall terminate. In the event the
284 Premises are partially destroyed, Lessor in its sole discretion shall repair and rebuild the
285 same within one hundred eighty days (180) days from when a decision to repair/rebuild is
286 made. Lessee shall pay rent, if the remaining Premises are tenantable, during such period
287 of repair or rebuilding in the proportion of tenantable Premises occupied by Lessee. In case
288 the remaining Premises, following a partial destruction, are untenantable by Lessee, Lessee
289 shall have the option to cease occupancy and all rent payments until the Premises are
290 tenantable or terminate the Lease. The word "tenantable" shall be understood by the parties
291 to mean the use described in Paragraph 12 above.
292

293 **18. SUBORDINATION AND ATTORNMENT**
294

295 Lessee shall not place liens or encumbrances on the Premises or any part thereof or interest
296 therein superior in lien and effect to this Lease.
297

298 In the event of a transfer of ownership of the Premises, Lessee agrees to attorn to the new
299 owner acquiring the Premises and to recognize such owner as Lessor under this Lease.
300 Lessee hereby waives any right to terminate this Lease because of such transfer, provided
301 neither the former owner nor the current Lessor is in breach of any provision of this Lease.
302 Lessee shall have the ability to request and receive adequate assurances of performance by
303 any new owner as a condition of attornment. In the event of a transfer of ownership of the
304 Lessee, the new owner of the Lessee agrees to perform under this Lease and to recognize
305 the Lessor under this Lease. Lessee hereby waives any right to modify or terminate this
306 Lease because of such transfer. Lessor shall have the ability to request and receive adequate
307 assurances of performance by any new Lessee owner as a condition of attornment.
308

309 **19. ESTOPPEL CERTIFICATE**

310
311 Lessee shall, upon not less than ten (10) days prior written request by Lessor, deliver to
312 Lessor a statement in writing, attached as Exhibit "D", certifying: (1) that this Lease is
313 unmodified and in full force and effect or if there have been modifications, that this Lease as
314 modified is in full force and effect; (2) the dates to which rent and other charges have been
315 paid, and (3) that Lessor is not in default under any provisions of this Lease, or if in default,
316 a detailed description of such default.
317

318 **20. NONDISTURBANCE**

319
320 Subject to the terms of this Lease, so long as Lessee is not in material breach of the terms of
321 this Lease, it shall have a right to the quiet possession of the Premises without disturbance
322 from the Lessor or any person claiming rights through Lessor, for the term of the Lease.
323 Any sale of the Premises by Lessor or other transfer of ownership, whether voluntary or by
324 operation of law, shall not by itself operate to terminate this Lease or Lessee's right of
325 possession.
326

327 **21. INTENTIONALLY OMITTED**

328
329 **22. ASSURANCE OF PERFORMANCE**

330
331 At any time during the term of this Lease or any renewal period of this Lease the Lessor
332 may request reasonable assurances of continued performance from the Lessee, successor in
333 interest, or lien-holder. If such satisfactory assurances to the request are not given, in
334 writing, within ten (10) days, Lessor may in its sole discretion, pursue any and all remedies
335 available to it at law or in equity.
336

337 **23. INDEMNIFICATION BY LESSEE; INDEMNIFICATION OF LESSOR**

338
339 To the fullest extent permitted by law, Lessee shall defend, indemnify, and hold harmless
340 the State of Arizona, and its departments, agencies, boards, commissions, universities,
341 officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and
342 against any and all claims, actions, liabilities, damages, losses, or expenses (including court
343 costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter
344 referred to as "Claims") for bodily injury or personal injury (including death), or loss or
345 damage to tangible or intangible property caused, or alleged to be caused, in whole or in
346 part, by the negligent or willful acts or omissions of Lessee or any of its owners, officers,
347 directors, agents, employees or subcontractors. This indemnity includes any claim or
348 amount arising out of, or recovered under, the Workers' Compensation Law or arising out
349 of the failure of such Lessee to conform to any federal, state, or local law, statute, ordinance,
350 rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee
351 shall, in all instances, except for Claims arising solely from the negligent or willful acts or
352 omissions of the Indemnitee, be indemnified by Lessee from and against any and all claims.

353 It is agreed that Lessee will be responsible for primary loss investigation, defense, and
354 judgment costs where this indemnification is applicable. In consideration of the award of
355 this contract, the Lessee agrees to waive all rights of subrogation against the State of
356 Arizona, its officers, officials, agents, and employees for losses arising from the work
357 performed by the Lessee for the State of Arizona.
358

359 This indemnity shall not apply if the Lessee or sub-lessee(s) is/are an agency, board,
360 commission or university of the State of Arizona.
361

362 **24. INSURANCE BY LESSEE**

363
364 24.1 Lessee and sublessees shall procure and maintain, until all of their obligations
365 have been discharged, including any warranty periods under this Lease, insurance against
366 claims for injury to persons or damage to property arising from, or in connection with, the
367 performance of the work hereunder by the Lessee, its agents, representatives, employees or
368 sublessees.
369

370 24.2 The insurance requirements herein are minimum requirements for this Lease
371 and in no way limit the indemnity covenants contained in this Lease. The State of Arizona
372 in no way warrants that the minimum limits contained herein are sufficient to protect the
373 Lessee from liabilities that arise out of the performance of the work under this Lease by the
374 Lessee, its agents, representatives, employees or subcontractors, and the Lessee is free to
375 purchase additional insurance.
376

377 24.3 Minimum Scope and Limits of Insurance

378
379 Lessee shall provide coverage with limits of liability not less than those stated
380 below.
381

382 24.4 Commercial General Liability (CGL) – Occurrence Form

383
384 Policy shall include bodily injury, property damage, and broad form contractual liability
385 coverage.
386

387	General Aggregate	\$2,000,000
388	Products – Completed Operations Aggregate	\$1,000,000
389	Personal and Advertising Injury	\$1,000,000
390	Damage to Rented Premises	\$50,000
391	Each Occurrence	\$1,000,000

392
393 24.4.1 The policy shall include coverage for Sexual Abuse and Molestation
394 (SAM). This coverage may be sub-limited to no less than \$500,000. The limits
395 may be included within the General Liability limit or provided by separate
396 endorsement with its own limits. If Lessee is unable to obtain SAM coverage
397 under Lessee's General Liability because the insurance market will not support

398 it, it should it be included with the Professional Liability.
399

400 24.4.2 Lessee must provide the following statement on their Certificate(s) of
401 Insurance: "Sexual Abuse and Molestation coverage is included" or "Sexual
402 Abuse and Molestation coverage is not excluded."
403

404 24.4.3 The policy shall be endorsed, as required by this Lease, to include the
405 State of Arizona, and its departments, agencies, boards, commissions,
406 universities, officers, officials, agents, and employees as additional insureds with
407 respect to liability arising out of the activities performed by or on behalf of the
408 Lessee.
409

410 24.4.4 Policy shall contain a waiver of subrogation endorsement, as required by
411 this Lease, in favor of the State of Arizona, and its departments, agencies, boards,
412 commissions, universities, officers, officials, agents, and employees for losses
413 arising from work performed by or on behalf of the Lessee.
414

415 24.5 Business Automobile Liability

416
417 Bodily Injury and Property Damage for any owned, hired, and/or non-owned
418 automobiles used in the performance of this Contract.
419

- 420 • Combined Single Limit (CSL)
- 421

422 24.5.1 Policy shall be endorsed, as required by this Lease, to include the State of
423 Arizona, and its departments, agencies, boards, commissions, universities,
424 officers, officials, agents, and employees as additional insureds with respect to
425 liability arising out of the activities performed by, or on behalf of, the Lessee
426 involving automobiles owned, hired and/or non-owned by the Lessee.
427

428 24.5.1 Policy shall contain a waiver of subrogation endorsement as required by
429 this Lease in favor of the State of Arizona, and its departments, agencies, boards,
430 commissions, universities, officers, officials, agents, and employees for losses
431 arising from work performed by or on behalf of the Lease.
432

433 24.6 Workers' Compensation and Employers' Liability

- 434 • Workers' Compensation
- 435 • Employers' Liability
- 436
- 437
- 438 ○ Each Accident
- 439 ○ Disease – Each Employee
- 440 ○ Disease – Policy Limit
- 441

442 24.6.1 Policy shall contain a waiver of subrogation endorsement, as required by
443 this Lease, in favor of the State of Arizona, and its departments, agencies, boards,

444 commissions, universities, officers, officials, agents, and employees for losses
445 arising from work performed by or on behalf of the Lease.

446
447 26.6.2 This requirement shall not apply to each Lessee or sublessee that is
448 exempt under A.R.S. § 23-901, and when such Lessee or sublessee executes the
449 appropriate waiver form (Sole Proprietor or Independent Contractor).

450
451 24.7 Professional Liability (Errors and Omissions Liability)

- 452 • Each Claim
- 453 • Annual Aggregate

454
455
456 24.7.1 If SAM coverage is being provided under this policy then Lessee must
457 provide the following statement on their Certificate(s) of Insurance: "Sexual
458 Abuse and Molestation coverage is included" or "Sexual Abuse and
459 Molestation coverage is not excluded." This coverage may be sub-limited to no
460 less than \$500,000.

461
462 24.7.2 In the event that the professional liability insurance required by this
463 Lease is written on a claims made basis, Lessee warrants that any retroactive
464 date under the policy shall precede the effective date of this Lease; and that
465 either continuous coverage will be maintained or an extended discovery
466 period will be exercised for a period of two (2) years beginning at the time
467 work under this Lease is completed.

468
469 24.7.3 Policy shall cover professional misconduct or wrongful acts for those
470 positions defined in the Scope of work this lease.

471
472 24.8 Additional Insurance Requirements

473
474 The policies shall include, or be endorsed to include, as required by this Lease,
475 the following provisions:

476
477 24.8.1 The Lessee's policies, as applicable, shall stipulate that the insurance
478 afforded the Lessee shall be primary and that any insurance carried by the
479 Arizona Department of Administration (ADOA), its agents, officials,
480 employees or the State of Arizona shall be excess and not contributory
481 insurance, as provided by A.R.S. § 41-621 (E).

482
483 24.8.2 Insurance provided by the Lessee shall not limit the Lessee's liability
484 assumed under the indemnification provisions of this Lease.

485
486 24.9 Notice of Cancellation

487
488 Applicable to all insurance policies required within the insurance requirements
489 of this Lease, Lessee's insurance shall not be permitted to expire, be suspended,

490 be canceled, or be materially changed for any reason without thirty (30) days
491 prior written notice to the State of Arizona. Within two (2) business days of
492 receipt, Lessee must provide notice to the State of Arizona if they receive notice
493 of a policy that has been or will be suspended, canceled, materially changed for
494 any reason, has expired, or will be expiring. Such notice shall be sent directly to
495 the Department and shall be mailed, emailed, hand delivered or sent by
496 facsimile transmission to (State Representative's Name, Address & Fax Number).
497

498 24.10 Acceptability of Insurers

499
500 24.10.1 Lessee's insurance shall be placed with companies licensed in the State
501 of Arizona or hold approved non-admitted status on the Arizona Department of
502 Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M.
503 Best" rating of not less than A- VII. The State of Arizona in no way warrants that
504 the above-required minimum insurer rating is sufficient to protect the Lessee
505 from potential insurer insolvency.
506

507 24.11 Verification of Coverages

508
509 Lessee shall furnish the State of Arizona with certificates of insurance (valid
510 ACORD form or equivalent approved by the State of Arizona) evidencing that
511 Lessee has the insurance as required by this Lease. An authorized representative
512 of the insurer shall sign the certificate.
513

514 All such certificates of insurance and policy endorsements must be received by
515 the State before work commences. The State's receipt of any certificates of
516 insurance or policy endorsements that do not comply with this Lease shall not
517 waive or otherwise affect the requirements of this Lease.
518

519 2.11.1 Each insurance policy required by this lease must be in effect at, or
520 prior to, commencement of work under this Lease. Failure to maintain the
521 insurance policies as required by this Lease, or to provide evidence of renewal,
522 is a material breach of Lease.
523

524 2.11.2 All certificates required by this Lease shall be sent directly to the
525 Department. The State of Arizona project/contract number and project
526 description shall be noted on the certificate of insurance. The State of Arizona
527 reserves the right to require complete copies of all insurance policies required
528 by this Lease at any time.
529

530 24.12 Sublessees

531
532 Lessee's certificate(s) shall include all sublessees as insureds under its policies or
533 Lessee shall be responsible for ensuring and/or verifying that all sublessees have
534 valid and collectable insurance as evidenced by the certificates of insurance and
535 endorsements for each sublessee. All coverages for sublessees shall be subject to

536 the minimum insurance requirements identified above. The Department reserves
537 the right to require, at any time throughout the life of the Lease, proof from the
538 Lessee that its sublessees have the required coverage.

539
540 24.13 Approval and Modifications

541
542 The Lessor, in consultation with State Risk, reserves the right to review or make
543 modifications to the insurance limits, required coverages, or endorsements
544 throughout the life of this Lease, as deemed necessary. Such action will not
545 require a formal Lease amendment but may be made by administrative action.

546
547 24.14 Exceptions

548
549 In the event the Lessee or sublessee(s) is/are a public entity, then the insurance
550 requirement shall not apply. Such public entity shall provide a certificate of self-
551 insurance. If the Lessee or sublessee(s) is/are a State of Arizona agency, board,
552 commission, or university, none of the above shall apply.

553
554 **25. TIME IS OF THE ESSENCE**

555
556 Time is of the essence of this Lease and each and all of its provisions.

557
558 **26. DEFINED TERMS AND MARGINAL HEADINGS**

559
560 The word "Lessor" and "Lessee" as used herein shall include the plural as well as the
561 singular. If more than one person is named as Lessee, the obligations of such persons are
562 joint and several. The marginal headings and titles to the articles of this Lease are not a part
563 of this Lease and shall have no effect upon the construction or interpretation of any part
564 hereof.

565
566 **27. EXTENSION; HOLDOVER**

567
568 If the Lessee is in full compliance with all terms of this Lease, Lessee shall have the right to
569 extend the term of this Lease upon sixty (60) days prior written notice to Lessor for a period
570 of one (1) year and, upon providing such notice to Lessor, Lessor and Lessee shall be bound
571 by the terms and conditions hereof for such period up to the maximum term of this Lease.

572
573 Should Lessee, with the Lessor's approval, hold-over possession after expiration of the
574 Lease term or any renewal thereof, Lessee shall become a Lessee on a month-to-month basis
575 upon the same terms and conditions of this Lease. Either Lessor or Lessee shall have the
576 right to terminate any holdover tenancy with thirty (30) days prior written notice to the last
577 known address of the other party without incurring any penalty or damages.

578
579 **28. ATTORNEY'S FEES**

581 In the event of any legal action or proceeding brought by either party against the other
582 arising out of this Lease, the prevailing party shall be entitled to recover costs and
583 reasonable attorney's fees, as determined by the court, not the jury, based on the prevailing
584 hourly wage for attorneys in Phoenix, Arizona, and such other matters deemed relevant by
585 the court, and such amount shall be included in any judgment rendered in such
586 proceedings.

587
588 **29. WAIVER**

589
590 No waiver by Lessor of any provision of this Lease or of any breach by Lessee hereunder
591 shall be deemed to be a waiver of any other provision hereof, or of any subsequent breach
592 by Lessee of the same or any other provision. Lessor's consent to or approval of any act by
593 Lessee requiring Lessor's consent to or approval shall not be deemed to render unnecessary
594 the obtaining of Lessor's consent to or approval of any subsequent act of Lessee.

595
596 **30. NOTICES**

597
598 All notices to be given by one party to the other shall be in writing, mailed or hand
599 delivered to each as follows:

600
601 **LESSOR:** Arizona Department of Health Services

602 **Attn:** _____

603 _____

604 _____

605
606
607 **LESSEE:** _____

608 **Attn:** _____

609 _____

610 _____

611
612 **31. AGREEMENTS IN WRITING**

613
614 All negotiations, considerations, representations, and understandings between the parties
615 are incorporated and expressly stated herein and may be modified and altered only by
616 agreement in writing between the parties delivered by certified mail. The parties hereto are
617 or have been represented by legal counsel in connection with this Lease and no provision
618 hereof shall be construed against either party as drafter of this Lease.

619
620 **32. PROHIBITION OF DISCRIMINATION**

621
622 The Lessor agrees to comply with State of Arizona Executive Order No. 09-09,
623 "PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS, NONDISCRIMINATION
624 IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS."

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33. LIENS

The Lessee shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Lessee. In the event that Lessee shall not, within ten (10) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a proper bond, Lessor shall have, in addition to all other remedies provided herein by law, the right to cause the same to be released by such means as he shall deem proper, including the payment of the claim giving rise to such lien. All such sums paid by Lessor and all expenses incurred by him in connection therewith shall be considered additional rent and shall be payable by Lessee on demand with interest at ten percent (10%) per annum.

Lessor shall have no right or any interest in the personal property of the Lessee located on or about the Premises and will not place any lien on such property for any reason. Lessor will not take any action to deprive Lessee of possession of its personal property, including, but not limited to taking possession of the Lessee's personal property unless Lessee has vacated the Premises. Should the Lessor come into possession of any personal property of Lessee as an incident of the exercise of any of the rights of Lessor under this Lease, Lessor agrees to promptly deliver such property to Lessee upon Lessee's request.

34. RIGHT OF RECOVERY

Neither party shall have a right of recovery from the other for force majeure.

35. INSPECTION AND AUDIT

In accordance with A.R.S. §§ 35-214 and 35-215, all books, accounts, reports, files and other records, hereinafter referred to as "Records," relating to this Lease shall be subject at all reasonable times to inspection and audit by the Lessor, the State Auditor, or their agents, or employees at the Lessor's office or at the Lessee's offices designated in paragraph 29 at any time during the terms of the Lease and for five (5) years after termination thereof. Upon request, the Lessee shall produce originals of any or all such Records.

36. SEVERABILITY

The provisions of this Lease are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Lease, which shall remain in effect without the invalid provision or application.

37. ARBITRATION

The parties agree to use arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable

669 statute. In the event such a dispute is arbitrated, the parties hereby agree that the prevailing
670 party is entitled to recover its attorneys' fees and costs. Attorney's fees shall be based on the
671 prevailing hourly rate for attorneys in Phoenix, Arizona.

672
673 **38. CONFLICT OF INTEREST**

674
675 This Lease is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511.

676
677 **39. ANTITRUST VIOLATIONS**

678
679 Lessee assigns to the State any claim for overcharges resulting from antitrust violations to
680 the extent that such violations concern materials or services supplied by third parties to the
681 Lessee toward fulfillment of this Lease.

682
683 **40. ARIZONA LAW**

684
685 This Lease shall be governed and interpreted by the laws of the State of Arizona.

686
687 **41. NO BOYCOTT OF ISRAEL**

688
689 Lessee does not participate in, and agrees not to participate in during the term of this Lease,
690 a boycott of Israel in accordance with A.R.S. § 35-993, *et. seq.*, as may be amended.

691
692 **42. NO BROKERS**

693
694 Lessor and Lessee each represent and warrant to the other that no brokerage fees have or
695 will be incurred as a result of negotiating and/or brokering this Lease.

696
697 **43. RECOVERY OF PREMISES UPON LESSEE ABANDONMENT OR LEASE**
698 **TERMINATION.**

699
700 Lessor and Lessee expressly acknowledge the right of Lessor and/or ADOH to take
701 possession of the Premises without notice in the event the Premises have been abandoned
702 by the Lessee, or the Lease has been terminated. Lessor and ADOH are hereby assigned the
703 rights under Lessee's occupancy arrangements it has with the Participants, which may be
704 exercised by Lessor and/or ADOH upon abandonment by the Lessee or the Lease has been
705 terminated. Upon either event, and without waiver of Lessee's obligations under this
706 Lease, Lessor and/or ADOH are entitled to enforce the occupancy arrangements Lessee has
707 with Participants for purposes of facilitating the exit of the Participants from the Premises. The
708 Lessor will be responsible for securing the Premises. The Premises are deemed to have been
709 abandoned by the Lessee if the Lessee, its sublessee or service provider no longer actively
710 staff the Premises.

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SIGNATURES FOLLOW ON NEXT PAGE

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**ARIZONA DEPARTMENT OF HEALTH SERVICES
PRIVATE SECTOR SPACE LEASE**

**LESSOR: ARIZONA DEPARTMENT OF HEALTH SERVICES, AN AGENCY OF
THE STATE OF ARIZONA**

LESSEE: _____

IN WITNESS WHEREOF, the parties hereto have executed this instrument by proper persons thereunto duly authorized so to do the day and year first above written.

LESSEE: _____

**FOR AND ON BEHALF OF THE LESSOR,
Arizona Department of Health Services, an
Agency of the State of Arizona:**

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Position: _____

Position: _____

Date: _____

Date: _____

Approved pursuant to A.R.S. § 41-792.
**FOR AND ON BEHALF OF THE ARIZONA
DEPARTMENT OF ADMINISTRATION**

By: _____

Nola Barnes

Position: _____

Assistant Director, ADOA

Date: _____

DRAFT

EXHIBIT "A"
PREMISES

DRAFT

EXHIBIT "B"
RECONFIGURED SPACE

DRAFT

EXHIBIT "C"
SUPPORTIVE SERVICES

DRAFT

EXHIBIT "D"

ESTOPPEL CERTIFICATE

The undersigned hereby certifies and agrees as follows:

The undersigned is the tenant under a lease dated [redacted] for Premises located at [redacted], [redacted], Arizona [redacted] (Premises), as amended by the following amendments (the "Lease"): [redacted].

1. The Lease is unmodified and in full force and effect or if there have been modifications, that the Lease as modified is in full force and effect;
2. Rent and other charges due under the term of the Lease have been paid through [redacted], and
3. The Lessor is not in default under any provisions of the Lease, or if in default, a detailed description of such default.

LESSEE: FOR AND ON BEHALF OF THE LESSEE _____

By: _____ Date: _____

Position: _____

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