STATE OF CALIFORNIA
STANDARD AGREEMENT AMENDMENT
STD. 213 A (Rev 6/08)

C07.247-7

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

STATE AGENCY'S NAME
California Department of Corrections and Rehabilitation

CONTRACTOR'S NAME
Corrections Corporation of America

2. The term of this Agreement is January 7, 2008 through June 30, 2019

3. The maximum amount of this Agreement after this amendment is:
Two Billion Two Hundred Eighty Three Million Two Hundred Twenty Nine Thousand Seven Hundred Eighty Nine Dollars and Forty Six Cents

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

This Agreement is entered into under the authority of the Three Judge Panel Court Order for the purposes of prison capacity reduction.

Effective upon approval, Agreement Number 5600000770, approved on January 7, 2008, amended on April 30, 2008, amended on December 23, 2009, amended on March 11, 2011, amended on December 31, 2012, amended on June 23, 2013, and amended on September 30, 2015, for Out of State Housing, is hereby amended to add $464,631,137.46 to this Agreement, extend the term of this Agreement through June 30, 2019, and revise various Exhibits and Attachments as detailed below. The total amount of this Agreement will not exceed $2,283,229,789.46.

The following is now incorporated herein:

1. STD 213 Page 1, Item 2 of the original Agreement is hereby amended to read: "The term of this Agreement is January 7, 2008 through June 30, 2019".

Additional Exhibits Listed on Page 2 of 2

All other terms and conditions shall remain the same.

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

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<th>CONTRACTOR</th>
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<td>Corrections Corporation of America</td>
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| CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) |
| Corrections Corporation of America |

| PRINTED NAME AND TITLE OF PERSON SIGNING |
| Natasha K. Metcalf, Vice President, Partnership Development |

| ADDRESS |
| 10 Burton Hills Boulevard |
| Nashville, TN 37215 |

| STATE OF CALIFORNIA |
| California Department of Corrections and Rehabilitation |

| PRINTED NAME AND TITLE OF PERSON SIGNING |
| Arlene Sakazaki, Associate Director, Office of Business Services |

| ADDRESS |
| 9838 Old Placerville Rd., Suite B-2, Sacramento, CA 95827 |

| CALIFORNIA Department of General Services |
| Use Only |

I hereby certify that all conditions for exemption have been complied with and this contract is exempt from the Department of General Services Approval. Exempt from DGS approval per Three Judge Panel Court Order.

By: [Signature]

Date: 10-12-15

Exempt per:
2. STD 213 Page 1, Item 3 of the original Agreement is hereby amended to read: “The maximum amount of this Agreement after this amendment is: $2,283,229,789.46. Two Billion Two Hundred Eighty Three Million Two Hundred Twenty Nine Thousand Seven Hundred Eighty Nine Dollars and Forty Six Cents”.

3. Exhibit A, Scope of Work, has been replaced with Exhibit A, Scope of Work, Amendment 7, and is attached hereto.

4. Attachment 1, Plata-Coleman Link, Amendment 7, is made a part of this Agreement and attached hereto.

5. Attachment 2, Armstrong Link, Amendment 7, is made a part of this Agreement and attached hereto.

6. Attachment 3, Daily Movement Sheet, Amendment 7, is made a part of this Agreement and attached hereto.

7. Attachment 4, Staff Deployment by Category, Amendment 7, is made a part of this Agreement and attached hereto.

8. Attachment 5, Master Roster Template, Amendment 7, is made a part of this Agreement and attached hereto.

9. Attachment 6, Daily Sign-in Sheets, Amendment 7, is made a part of this Agreement and attached hereto.

10. Attachment C, Distribution of Inmate Death Reports, has been replaced with Attachment 7, Distribution of Inmate Death Reporting and Review Policy, Effective September 5, 2008, Amendment 7, and is attached hereto.

11. Attachment D, Program Participation Chart has been replaced with Attachment 8, Offender Program Participation Table, Amendment 7, and is attached hereto.

12. Attachment 9, ACA Standards, Amendment 7, is made a part of this Agreement and attached hereto.

13. Attachment 10, FDCR Template, Amendment 7, is made a part of this Agreement and attached hereto.

14. Exhibit B, Budget Detail and Payment Provisions, has been replaced with Exhibit B, Budget Detail and Payment Provisions, Amendment 7, and is attached hereto.

15. Exhibit B-1, Budget Rate Sheets, has been replaced with Exhibit B-1, Rate Sheet, Amendment 7, and is attached hereto.

16. Exhibit B-2, Rate Sheet, Amendment 7, is made a part of this Agreement and attached hereto.

17. Exhibit B-3, Rate Sheet, Amendment 7, is made a part of this Agreement and attached hereto.

18. Exhibit B-4, Rate Sheet, Amendment 7, is made a part of this Agreement and attached hereto.

19. Exhibit B-5, Rate Sheet, Amendment 7, is made a part of this Agreement and attached hereto.

20. Exhibit C, General Terms and Conditions, GTC 307, has been replaced with Exhibit C, General Terms and Conditions, GTC 610, effective June 9, 2010, which is incorporated by reference and made a part of this Agreement as if attached hereto. This document can be viewed at the following website: http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx.

21. Exhibit F, Business Associates Agreement (HIPAA), Amendment 6, has been replaced with Exhibit F, Business Associates Agreement (HIPAA), Amendment 7, and is attached hereto.
OFFENDER RELOCATION/HOUSING
AGREEMENT BETWEEN:

STATE OF CALIFORNIA
AND
CORRECTIONS CORPORATION OF AMERICA

This Contract is entered into between the State of California Department of Corrections and Rehabilitation (hereinafter “STATE” or “CDCR”) and Corrections Corporation of America (CCA), 10 Burton Hills Blvd., Nashville, Tennessee, 37215 (hereinafter “CONTRACTOR”). Exhibit A, Scope of Work of this contract amendment replaces and supersedes Exhibit A, Scope of Work of Contract # C07.247, Amendment #6.

WHEREAS, the STATE requires correctional bed space and services for STATE Offenders due to continuing in-state crowding issues and has the lawful authority to enter into this Contract.

WHEREAS, the CONTRACTOR operates or has access to correctional facilities (“Facilities”) in the states of Arizona, Mississippi, and Oklahoma deemed suitable by CDCR for the housing and care of CDCR Offenders and has the lawful authority to enter into this Contract and perform or have performed the required services as set forth herein.

THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

Article I.
DEFINITIONS

Additional Services – means those additional operational and management services required to be furnished by the CONTRACTOR because of changes in American Correctional Association (ACA) Standards, state or federal laws, government regulations, or judicial decisions that cause an increase in the cost of operating and managing the Facilities.

CBU – means the Contract Beds Unit.

CCR Title 15 - means the California Code of Regulations, Title 15, “Crime Prevention and Corrections” including all subsequent amendments thereto.

CDCR Contract Monitor – The designated representative of the CDCR or his/her designee/delegate serving as liaison between CDCR and the CONTRACTOR and who monitors the CONTRACTOR’s performance under this Agreement. This shall also apply to any monitor on behalf of the federally appointed receiver’s office in the Federal Court case of Plata v. Brown monitoring health care.

COCF – means the California Out-of-State Correctional Facility program.

Coleman – refers to the Federal Court case of Coleman v. Brown, pertaining to care of mentally ill Offenders through the mental health services delivery system.

Contract – means this Agreement, or where referenced the prior Agreement between the parties hereto.
Contract Year – means the twelve consecutive month period commencing on the date of execution of this Agreement with a new Contract Year beginning in each consecutive twelve month period thereafter until the expiration or termination of this Agreement.

Critical positions - means those positions that are filled by a specific individual. Staff members are hired into the facility to fill a specific role, unlike a correctional officer that is trained and may fill a variety of posts. If these positions are not filled on the 61st day of vacancy the CONTRACTOR may be assessed an amount equal to the salary and benefits for such position beginning on the 61st day for as long as the position is vacant.

Court with Jurisdiction – is any court which has jurisdiction over the transfer of Offenders pursuant to this Agreement; including but not limited to, the courts in Coleman v. Brown (U.S. District Court, Eastern District of California, Case No. CIV S-90-0520), Perez v. Cate (U.S. District Court, Northern District of California, Case No. C055241 JSW), Armstrong v. Brown (U.S. District Court, Northern District of California, Case No. C94-2397 CW), and Plata v. Brown (U.S. District Court, Northern District of California, Case No. C01-1351 TEH).

Department/CDCR – means the California Department of Corrections and Rehabilitation.

Day – means calendar day, unless otherwise defined, in this Agreement.


Facilities – means the correctional institutions operated by the CONTRACTOR in the states of Arizona, Mississippi, and Oklahoma, known as the Tallahatchie County Correctional Facility, North Fork Correctional Facility, Florence Correctional Center, and La Palma Correctional Center, and any other CONTRACTOR Facilities added by mutual agreement pursuant to Exhibit A, Scope of Work, Section 3.01, Offender Housing.


Indigent Offender – means an Offender who is wholly without funds at the time they were eligible for withdrawal of funds for canteen purchases.

In-patient Care – means care received in a free standing, non-correctional hospital on an in-patient basis, including any and all physician or consulting professional services provided to the Offender in the hospital.

Lockdown – The restriction of all Offenders to their cells/dormitory beds encompassing no less than a Facility. True lockdowns are rare occasions, generally following very serious threats to institutional security and the safety of staff and Offenders. The movement of any Offender to an assignment or resumption of any program would change the lockdown status of the program, returning the institution/facility to a diminished level of modified program or to normal program.

Mandatory ACA Standards – means those standards identified as being mandatory in the American Correctional Association’s Standards for Adult Correctional Institutions, 4th Edition. Some mandatory standards may be modified, amended, or supplemented in the future.

Mandatory posts – means those posts that will be filled each shift as delineated.

Modified Program – The suspension of any operation, procedure, service, or function to prevent, isolate, contain, or control a disruption of orderly operations, caused by an Offender
initiated disturbance, natural disaster, or external stimulus. The modified program definition encompasses any restrictions or modifications which do not constitute a lockdown. The term “partial lockdown” is contained within the modified program definition and should no longer be used.

Note: The routine and temporary restrictions on Offender movement or yard activities during alarm response and/or immediately following an accident are not considered a program modification.

**National Commission on Correctional Health Care Standards (NCCHC)** – those standards of health care services as defined and established by the NCCHC in the 2003 Edition of Standards for Health Services in State Prisons.

**Offender** – means any adult male person incarcerated pursuant to applicable California laws, and assigned to the Facility for housing under this Agreement.

**Offender Day** – means each day, including the first day, but not the last, that an Offender is admitted to the Facility as determined by the Midnight Count.

**Operating Requirements** – means applicable federal, state, and local laws, court orders, constitutional standards, and CDCR regulations made applicable to the Facility by this Agreement.

**Post** – A post is an assignment or area to be covered by a staff person, and does not have to be designated to a specific staff member.

**UHR** – means Unit Health Record.

**Warden** – means the Administrative Head who manages operations at the Facility.

**Article II**

**TERM OF THE AGREEMENT**

**Section 2.01 Option to Extend Term.**

The parties agree that should they desire to extend the term of this Agreement they shall notify one another of their desire to extend the term not less than 180 days prior to the expiration of the initial term. The provisions of this Contract, as amended if so amended during that time, shall apply to any extended term, except that the compensation for the extended term shall be subject to negotiation between the parties. Should the parties not agree on a new rate of compensation to apply to the extended term, this Agreement shall expire on the original term end date.

**Section 2.02 Termination for Non-Appropriation.**

Notwithstanding anything set forth in the provisions of Exhibit A, Article VIII, Default and Termination, it is understood and agreed that the State is a government entity and that the State reserves the right to terminate this Contract if, in the judgment of the State, the Legislature of the State of California, at any time during its duly convened Legislative process, fails, neglects, or refuses to appropriate or continue appropriation of sufficient funds as may be required for the State to continue the payments required hereunder.
Section 2.03 Responsibility Hearing.

If this Agreement is terminated for cause, CDCR reserves the right to conduct a responsibility hearing to determine if the CONTRACTOR is a responsible bidder before an award of future Agreements can be made.

Article III

CDCR OFFENDERS

Section 3.01 Offender Housing.

The CONTRACTOR shall confine and supervise CDCR Offenders that are transferred to the Facilities pursuant to the terms and conditions of this Agreement. CDCR Offenders shall only be housed in housing units consistent with the Offenders’ classification and security needs, subject to the prior written approval of the CDCR Contract Monitor or designee.

CONTRACTOR agrees to make available, and CDCR agrees to utilize, beds at the Facilities.

Provided, however, nothing herein shall prevent the CONTRACTOR and CDCR from mutually agreeing to reallocate beds among the Facilities, add additional Facilities, delete Facilities, and increase or decrease the total number of contracted beds, as necessary, to meet CDCR needs. Subject to mutual agreement, the CONTRACTOR may reallocate the CDCR population among the Facilities in such a manner as to improve the efficiency of overall Facility operations. All such costs associated with such a reallocation among the Facilities shall be borne by the CONTRACTOR. The staffing levels necessary to support the reallocated populations are subject to mutual agreement. This provision shall not apply in the event that such vacancies are caused by an act of contract default on the part of the CONTRACTOR, or in the event that CONTRACTOR has requested that such beds remain vacant.

CDCR minimum payment shall be based on actual occupancy.

Section 3.02 Selection and Placement Process.

The CDCR Offenders to be housed in the Facilities shall be selected on the basis of compliance with all applicable state statutes or other applicable laws or regulations of the state in which the Facilities are located, relating to the housing of out of state Offenders as may apply, and in addition thereto, the following criteria and conditions:

3.02.1 CDCR and CONTRACTOR shall mutually agree on suitable Offenders to be housed in the CONTRACTOR Facilities. In the event that CDCR requests that the CONTRACTOR accept Offenders with serious or significant mental health or physical problems, included but not limited to physical disability, CDCR and the CONTRACTOR shall mutually agree to an appropriate plan of care for the population and the allocation of costs associated therewith. If the overall percentage of Offenders in CONTRACTOR Facilities requiring Hepatitis C treatment exceeds the overall percentage of Offenders requiring Hepatitis C treatment in the CDCR system, CDCR agrees to pay the treatment costs for those Offenders in excess of the percentage of Offenders requiring Hepatitis C treatment in the CDCR system.

3.02.2 Offenders assigned to the Facilities shall be males, eighteen years of age or older.
3.02.3 CONTRACTOR may reject any Offender found not to meet the receiving state’s criteria or otherwise deemed by the CONTRACTOR, with CDCR’s concurrence, to be unsuitable for assignment to a particular Facility. In the event the initially considered Facility is deemed unsuitable for a particular Offender, the CONTRACTOR shall make all due effort to assign Offenders to an alternate, appropriate Facility under this Agreement.

Upon arrival of any CDCR Offender to a Facility, the CDCR shall provide to the Facility’s Warden, without charge, copies of pertinent data from institutional files, commitment or other judicial orders, and medical records of each CDCR Offender to be housed at the Facility. The CONTRACTOR shall assume any costs associated with a review of Offender central files to determine the impact to CDCR of the receiving state’s statutory requirements. All CDCR Offender information shall be subject to statutory limitations on disclosure, including but not limited to State privacy laws, and provisions of the federal requirements imposed by the HIPAA or other federal privacy laws. The CONTRACTOR shall release information only in accordance with CDCR direction.

A duly authenticated copy of the CDCR Offender’s commitment papers and any other official papers or documents authorizing detention, case file materials, and medical/dental/psychiatric records shall be delivered at the same time a CDCR Offender arrives at the transfer point. After the Agreement is executed and CONTRACTOR becomes familiar with CDCR Offender files, the CONTRACTOR may make reasonable requests for additional papers, or documents, to be delivered to CONTRACTOR. CDCR understands that the safe and secure management of the Facilities is dependent upon the CONTRACTOR’s receipt of complete Offender files and shall not unreasonably withhold requested documents.

The CONTRACTOR will work collaboratively with CDCR to implement any newly available Electronic Database Software, including but not limited to the Strategic Offender Management System (SOMS) to enhance operationally necessary transfer of information.

The CDCR reserves the right to modify the Offender eligibility screening criteria on an as-needed basis without amending the Agreement. Modifications become effective upon written notification from the CDCR.

Section 3.03 Transfer/Delivery of Offenders.

At the request of CDCR, the CONTRACTOR shall be responsible for the transporting of Offenders to and from CDCR to the Facilities. The parties agree to cooperate and coordinate their procedures regarding transport so as to minimize the expense associated with such transfers. All required Offender local transportation to and from the Facilities within a 150 mile radius (e.g., for offsite medical care both urgent or emergent and routine) shall also be provided and paid for by the CONTRACTOR. Upon the request of the CONTRACTOR and with prior written approval of the CDCR Contract Monitor, CONTRACTOR shall be entitled to transfer a CDCR Offender from one Facility to another, provided the Facility receiving the transferred CDCR Offender is operated by CONTRACTOR pursuant to an Agreement between CDCR and CONTRACTOR or between CDCR and an entity with which CONTRACTOR has an operating contract. CONTRACTOR agrees to follow CDCR staffing requirements on any CCA provided transport.

CDCR will provide CONTRACTOR an Offender Transport Manifest for each requested transport. Upon completion of the transport, CCA will sign the Manifest confirming delivery of the Offender and property, and email or fax a copy to CDCR.
Section 3.04 Costs of Transport of Offenders.

Except as otherwise provided below, CDCR shall reimburse CONTRACTOR for the cost of transporting Offenders from the transfer point in California to the Facility, from the Facility to the transfer point in California, and from Facility to Facility, pursuant to the following pricing schedule:

A. Cost of airframe and crew ("charter costs") at actual costs. CONTRACTOR agrees to provide CDCR with the cost quote for any air transfer and CDCR shall have 48 hours to approve or reject that quote. If CDCR rejects a quote, CDCR shall cooperate with CONTRACTOR to obtain a replacement service provider to provide the same service at a rate acceptable to CDCR. If a better quote cannot be obtained through these efforts, CDCR shall determine a competitive alternative transportation provider. The cost of guarding shall be reimbursed to the CONTRACTOR and is determined by the CONTRACTOR’s actual cost of salary and fringe benefits for each guard accompanying the transportation of Offenders. Salary and fringe benefits are defined for this section as actual salary, plus 26 percent of salary in addition thereto, to cover the fringe benefits. In addition, CONTRACTOR shall be entitled to administrative overhead on said amounts calculated for guarding at a rate of 15 percent of the base salary.

B. CONTRACTOR shall be reimbursed for ground transportation of Offenders pursuant to the following pricing schedule:

Tallahatchie County Correctional Facility to Arizona Facilities or Arizona Facilities to Tallahatchie County Correctional Facility
- 1st Offender - $1089.36 per Offender (1513 miles at $0.72 per mile)
- 2nd - 4th Offender - $932.01 per Offender (1513 miles at $0.62 per mile)
- 5th - 30th Offender - $823.07 per Offender (1513 miles at $0.54 per mile)

North Fork Correctional Facility to Arizona Facilities or Arizona Facilities to North Fork Correctional Facility
- 1st Offender - $599.04 per Offender (832 miles at $0.72 per mile)
- 2nd - 4th Offender - $512.51 per Offender (832 miles at $0.62 per mile)
- 5th - 30th Offender - $452.61 per Offender (832 miles at $0.54 per mile)

Tallahatchie County Correctional Facility to North Fork Correctional Facility or North Fork Correctional Facility to Tallahatchie County Correctional Facility
- 1st Offender - $444.96 per Offender (618 miles at $0.72 per mile)
- 2nd - 4th Offender - $380.69 per Offender (618 miles at $0.62 per mile)
- 5th - 30th Offender - $336.19 per Offender (618 miles at $0.54 per mile)

Included in the price schedule above are the costs of guarding.

C. In the event the CONTRACTOR is required to move a vehicle carrying no Offenders into position at a Facility for the purpose of completing a one-way ground transport of Offenders, CONTRACTOR shall be reimbursed for the one-way ground transport pursuant to the following pricing schedule:
Total Cost includes:
- Repairs & Maintenance: $0.28 multiplied by the number of one-way miles
- Depletion: $1.10 multiplied by the number of one-way miles
- Per Diem: $36.00 multiplied by the number of days multiplied by the number of staff
- Fuel: Actual fuel cost per gallon multiplied by the number of one-way miles at a rate of 7 miles per gallon

D. In the event CONTRACTOR requests the return of an Offender to California, or the transfer of an Offender to another Facility, who otherwise meets the criteria of the receiving state, meets the criteria of the CDCR, and has been placed in a Facility with the initial Agreement of the CONTRACTOR, then in such event CONTRACTOR shall be responsible for the transportation and property costs associated with said return.

E. Notwithstanding any other provisions of Exhibit A, Scope of Work, Section 3.04, Costs of Transport of Offenders, CONTRACTOR shall be responsible for up to the first $500,000.00 for the cost of transportation between California and all Arizona Facilities annually.

F. Transportation of Offender Property:

1) Each CDCR Offender is allowed six (6) cubic feet of personal property per CCR Title 15.

2) One property box (not to exceed 24 inches x 16 inches x 12 inches) may be transported on the CONTRACTOR's vehicle for each Offender. Additional property boxes may be transported subject to the availability of space. CDCR will provide CONTRACTOR shipping labels to ship, at CDCR's expense, excess property boxes that cannot be transported on the vehicle.

3) When an Offender’s property is being prepared to be shipped to California, property in excess of six (6) cubic feet should be disposed of as detailed in CCR Title 15. No additional personal property is to be transported.

In the event an Offender's personal property is not at the specified transfer point at the time of pick up by CDCR, the CONTRACTOR shall be responsible to ship, at the CONTRACTOR'S expense, one property box (not to exceed 24 inches x 16 inches x 12 inches) to the CDCR institution.

G. The terms contained herein do not provide the CONTRACTOR exclusive rights to transport CDCR Offenders.

Section 3.05 Offender Funds.

Funds of an individual CDCR Offender shall be provided to CONTRACTOR by CDCR within seven (7) working days of the CDCR Offender's transfer. These funds shall be held and managed pursuant to CDCR policies, procedures, and practices, which shall be provided to CONTRACTOR prior to Offender arrival.
Section 3.06 Offender Work/Program Assignment Payment.

CONTRACTOR shall pay all Offenders assigned to the work incentive program Offender wages equal to the amount paid to other Offenders housed at the particular Facility at the time of transfer. Provided, however, CDCR shall inform CONTRACTOR of the applicable pay scales utilized by CDCR, and inform CONTRACTOR of any changes occurring thereto during the term of this Agreement. CONTRACTOR will review the CDCR pay scale to ensure that it keeps with the Facility pay scales currently in place. In the event of a discrepancy, CONTRACTOR will make a recommendation to CDCR for a solution – recognizing the need to treat CDCR Offenders housed out of state in a similar manner to CDCR Offenders in state, taking into account CONTRACTOR's need for similar treatment for all jurisdictions in the Facility. In the event CDCR Offenders are housed in a Facility with other jurisdictions where a pay scale discrepancy exists, CONTRACTOR will provide a report initially and annually.

Section 3.07 Return of Offenders to the CDCR.

3.07.1 Upon demand by the CDCR, Offenders will be delivered to the custody of the CDCR pursuant to the terms as set forth in Exhibit A, Scope of Work, Section 3.03, Transfer/Delivery of Offenders.

3.07.2 Within 14 days of receiving a good faith request from the CONTRACTOR (based on the diagnosis of a serious medical condition, on-going or serious disciplinary reasons, or inability to provide a level of custody consistent with the safety and security of the Offender and/or staff), the CDCR and CONTRACTOR will develop a mutually agreed upon plan to address the matter.

3.07.3 CONTRACTOR and CDCR agree that in the case of Offenders who are members of the Coleman class, returns shall be accomplished in strict accordance with Coleman return guidelines.

3.07.4 No Offender who completes his sentence, is released by court order, or is placed on probation or parole shall be released in a state, other than California, unless that State has a detainer on the Offender, or has accepted custody of the Offender pursuant to an interstate compact, unless the Offender is released to the custody of another federal or state agency. In every other case, prior to release from custody, Offenders shall be returned to the CDCR, or to the custody of such jurisdiction as has agreed to take the Offender, pursuant to the terms as set forth in Exhibit A, Scope of Work, Section 3.03, Transfer/Delivery of Offenders.

3.07.5 When a CDCR Offender returns to CDCR, the CONTRACTOR shall provide that Offender’s funds in the form of a check payable to CDCR, in the amount due to the CDCR Offender, for credit to the CDCR Offender’s account, within seven (7) business days of the CDCR Offender’s transfer unless an alternate location is directed by CDCR.

3.07.6 When a CDCR Offender is identified to return to CDCR, the CONTRACTOR will ensure the field file is current, with documentation to include, but not limited to, program activities (work, education, etc.), classification endorsement and action, infraction history, and other items deemed necessary by CDCR. In addition, the CONTRACTOR will provide a medical summary and ensure the UHR is current with relevant medical documentation. In addition, upon transfer, the CONTRACTOR will provide the current field file, medical summary, and UHR.
Article IV

OPERATION OF FACILITY

Section 4.01 General Duties.

The CDCR Offenders in the Facilities shall be confined and supervised in accordance with the CCR Title 15, DOM, and receiving states’ existing state law. The CONTRACTOR shall maintain mutually agreed upon staffing levels at the Facilities in accordance with ACA standards, in sufficient numbers and rank to maintain the safety of the public, staff, and Offenders, and to adequately carry out the provisions of this Agreement. CONTRACTOR shall not seek additional reimbursement from CDCR in excess of the per diems stated hereunder in instances where the CONTRACTOR increases staff in order to perform the services required under this Agreement. Provided, however, this shall not apply in instances where CDCR requests or requires additional services, or services for a different Offender population than originally contemplated hereunder. The CONTRACTOR shall provide CDCR with staffing levels for each Facility where CDCR Offenders are housed prior to execution of this Agreement. Said staffing levels are attached hereto as Attachment 4, Staff Deployment by Category. In the event of any change to the staffing levels for the staff assigned to the particular CDCR housing units during the term of this Agreement, revised levels shall be provided to CDCR in advance of any change, and shall be subject to CDCR approval, which shall not be unreasonably withheld and shall be granted or withheld within ten (10) business days, or a reasonably agreed upon time frame for the request. In advance of any change, the CONTRACTOR will exercise authority to ensure that the daily operations of the Facility are in compliance with the provisions of this Agreement. Subject to the provisions of this Agreement, the CONTRACTOR shall provide CDCR Offenders care and treatment, including the furnishing of subsistence and routine and emergency medical care consistent with the requirements of ACA standards, NCCHC standards, CCR Title 15, and constitutionally appropriate and/or court imposed guidelines. CONTRACTOR shall also provide for their physical needs of CDCR Offenders, make work, education, training and treatment programs available, retain CDCR Offenders in safe, supervised custody, maintain proper discipline and control, make certain that any applicable court orders are complied with, provide reasonable access to the courts, and otherwise comply with all applicable law. Additionally, CONTRACTOR shall provide case management of CDCR Offenders, consistent with CCR Title 15, including classification, monitoring earned/good time, disciplinary activity, programming, and other Offender activity.

CDCR Offenders shall be provided with a copy of the Facility rules and procedures (orientation guide) upon arrival. The orientation information must include the process for obtaining medical/mental health care, the disciplinary process, the request for reasonable accommodation under ADA, and the Offender appeal/grievance process. A verbal orientation shall also be provided upon arrival of CDCR Offenders. CONTRACTOR shall ensure effective communication during orientation. Where appropriate this may include, but is not limited to, use of interpreters or ADA approved communication devices.

Section 4.02 Minimum Required Staffing.

4.02.1 CDCR may assess liquidated damages if the CONTRACTOR fails to maintain minimum staffing for mandatory posts as mutually agreed by the CONTRACTOR and CDCR in writing. The mandatory post and critical position designations and any revisions thereto shall be made in writing and shall be signed on behalf of CDCR by its Chief or designee and on behalf of the CONTRACTOR by its Vice President of Operations. To the extent any housing, program, or other area is not occupied, as a result of a reduction in
Offender population, CONTRACTOR shall not be required to staff any mandatory posts for that area and shall not be subject to liquidated damages for vacant mandatory posts in such unoccupied area. The CONTRACTOR may use contract staff and overtime to fulfill its mandatory post staffing requirements. The CONTRACTOR shall exercise due diligence in filling staffing vacancies and, to the fullest extent possible, the duties of the vacant post(s). This shall be performed through the use of overtime, contract staff, or other mutually agreed upon alternative means for the CONTRACTOR to not be deemed in breach of this Contract and to not be subject to an assessment of liquidated damages. For each shift that a mandatory shift is not covered, CDCR may assess damages in an amount equal to the daily rate (salary and benefits) per post, per day as long as the deficiency continues.

CONTRACTOR shall have 60 calendar days to fill a vacant Critical Position. To the extent any housing, program, or other area is not occupied as a result of a reduction in Offender population, CONTRACTOR shall not be required to staff any critical positions for that area according to Attachment 5, Master Roster Template, and shall not be subject to liquidated damages for vacant critical positions in such unoccupied area. A Critical Position shall not be deemed vacant in the event that the CONTRACTOR is using contract staff, overtime, or other mutually agreed upon alternative means to fulfill the duties of the Critical Position. Beginning on the 61st calendar day that a Critical Position remains vacant, CDCR may assess liquidated damages in an amount equal to the daily rate (salary and benefits) for such Critical Position per day as long as the Critical Position remains vacant. CONTRACTOR agrees to not circumvent the imposition of liquidated damages by multiple short term staff assignments.

Recognizing that the CONTRACTOR will incur certain costs to recruit new employees, and costs to cover the vacancies through contract staff and overtime, the first monthly assessment of liquidated damages per Contract Year, per CONTRACTOR Facility, will be subject to a maximum of $10,000.00 and the second monthly assessment of liquidated damages per Contract Year, per CONTRACTOR Facility, will be subject to a maximum of $20,000.00. The third and each subsequent monthly assessment of liquidated damages per Contract Year, per CONTRACTOR Facility, will not be subject to a maximum amount. It is agreed that this amount is to be paid as liquidated damages, and not as a penalty, as it is difficult to affix the amount of actual damages. The CONTRACTOR shall not be liable for liquidated damages for a failure that results from an occurrence beyond its control. Assessment of liquidated damages shall not preclude CDCR from terminating this Contract for breach as provided herein. Withholding of payment as liquidated damages shall not relieve the CONTRACTOR of any of its obligations under the Contract.

Section 4.03 ACA Accreditation.

CONTRACTOR shall obtain, and maintain, ACA accreditation of each of the Facilities occupied by CDCR under this Agreement. It is understood that a facility shall have been fully operational for 18 months before ACA accreditation becomes available, and CONTRACTOR shall seek accreditation of any such newly constructed or re-opened facility within the earliest practical time. This requirement may be waived in circumstances where the actions of, or needs of, CDCR prevent such accreditation.

Section 4.04 Contract Monitors.

4.04.1 In administering this Agreement, the CDCR shall designate a CDCR Contract Monitor, to monitor the CONTRACTOR’s performance under this Agreement.
4.04.2 The CONTRACTOR shall designate a person who shall act as the Facility’s contact person for the purposes of the administration of this Agreement.

4.04.3 Any change in the Contract Monitor or the CONTRACTOR’s designated contact person shall be effective upon 10 days prior written notice of such change to the other party.

4.04.4 Unless otherwise provided, the CONTRACTOR shall permit the CDCR, court appointed Receiver or Special Master, and any other duty authorized agent or governmental agency, to monitor all activities conducted by the CONTRACTOR pursuant to the terms of the Agreement. Specifically included in this provision is the right of the federally appointed receiver in the case of Plata v. Brown to monitor healthcare services within the Facilities. Such monitoring may consist of internal procedures evaluation, examination of program data, special analysis, on-site checking, formal audit examinations or any other reasonable procedures as CDCR or the Receiver may in their sole discretion deem necessary or appropriate. All such monitoring shall be performed in a manner that shall not unduly interfere with Agreement work. Also specifically included in this provision is the right of the Special Master in the pending case of Coleman v. Brown to monitor the provision of constitutionally adequate mental health care for all plaintiff class Offenders. Former class members may be transferred pursuant to this Agreement and some transferred Offenders may become members of the plaintiff class during their stay in the CONTRACTOR’s Facilities. The contracting parties acknowledge that the Special Master or his designee(s) may make inquiries involving policies and procedures for care of plaintiff class members and shall have the right, if a dispute about the adequacy of provided mental health services arises, to visit and assess the mental health services provided by the CONTRACTOR to plaintiff class members. Also specifically included in this provision is the right of the CDCR Dental Program to monitor the provision of dental services within the institution, including the preparation and submission to CDCR of periodic reports as determined by the Dental Liaison to COCF. CONTRACTOR shall cooperate with such visits, which shall not interfere unduly with Agreement work.

4.04.5 The Receiver appointed in the Federal Court case of Plata v. Brown, may, in his discretion, appoint a Healthcare Monitor to either be housed at the Facilities, or to make periodic inspection visits to the Facilities consistent with the provisions of this section. The same information as is provided by CDCR to CONTRACTOR for its Contract Monitor shall also be provided to CONTRACTOR for the Healthcare Monitor.

Section 4.05 Medical/Mental Health/Dental.

The CONTRACTOR shall provide essential health services, including medical, dental, and mental health services, while meeting the applicable standards and levels of quality established by the ACA, NCCHC, and CCR Title 15. In addition, the CONTRACTOR shall provide services consistent with all applicable federal, state, local laws and regulations governing the delivery of Offender health services, any applicable court orders, including, but not limited to, orders issued in the case of Plata v. Brown and Coleman v. Brown, and establish the necessary quality controls to ensure all policies and procedures are designed and implemented in a manner to promote orderly and efficient delivery and management of health care services to CDCR Offenders. Compliance with applicable court orders, as set forth above, shall not be deemed to be submission to the jurisdiction of the ordering court, and is a contractual obligation only.

- CDCR Offenders shall be provided health services consistent with the services provided by the CDCR under applicable CDCR Offender health services policies and procedures.
Services – All Offender medical services shall be provided at the Facilities when possible. For cases requiring emergency care or care that is medically necessary but outside the capability of the providers at the Facility, e.g. specialty physician or hospital-based services, existing arrangements with local health care providers shall be utilized to obtain the required services. At the inception of this Agreement, a listing of all existing contractual arrangements with local healthcare providers, including, but not limited to, acute care hospitals and clinics, shall be made available to CDCR by CONTRACTOR. Any change to this list shall be communicated to CDCR. This list shall be provided on an annual basis or as changes occur.

CONTRACTOR will have a contracted hospital provider in its off-site network for Offenders requiring inpatient psychiatric admission, including crisis counseling. All Offenders suspected of being sexually assaulted shall be sent to the local emergency room for treatment, and a rape kit will be sent to the hospital with the transferring officers, consistent with CDCR Prison Rape Elimination Act (PREA) protocols.

The CONTRACTOR shall have policies and procedures for providing routine and urgent medical, dental, and mental health services. The policies and procedures shall include, but not be limited to, the following:

- 24 hour care, seven (7) days a week emergency medical, dental, and mental health care;
- Initial health screening;
- Health appraisal examination;
- Daily triaging of complaints;
- Sick call procedures with a health practitioner, including offering this service at least five (5) days per week;
- Outpatient medical, dental, and mental health service, including diagnostics and physical therapy;
- Inpatient medical services;
- Special medical programs and services for, but not limited to, Offenders with chronic needs or requiring convalescent care;
- Mental health and substance abuse services;
- Adequate staffing of trained professional health services staff and support staff;
- Pharmaceutical services and supplies;
- No cost to CDCR Offender for medication refills and renewals;
- Optometric services;
- Health education;
- Medical diets;
- Infection control; and
- Quality control/peer reviews.

Initial/Preliminary Screening – All screening will be conducted by trained and licensed healthcare personnel on all Offenders upon the Offender’s arrival at the Facilities. Screening will include, but not be limited to:

- An inquiry into the Offender’s health care history, including status of current modalities and medications;
- An observation of the Offender’s behavior, physical limitations and capabilities, and current physical condition;
- An immediate referral to appropriate health care professionals, for emergency care, prescription management, or modality authorization.
At the initial screening, all Offenders will receive orientation about the Health Services Unit, including the procedures for accessing care.

**Full Health Appraisal (Intake)** – During the initial occupancy phase of this contract, all Offenders will receive a full health appraisal in compliance with CDCR and Inmate Medical Services Policies and Procedures. This health appraisal will include, but not be limited to:

- Review of the earlier screening;
- Review of the CDCR health care record, including documented history and problem list, medications ordered, conditions requiring ongoing treatment, and modalities authorized;
- Collection of a more detailed health services history;
- Medical examination, including review of mental health and dental health status if not previously examined at CDCR in the previous six (6) months;
- Laboratory or diagnostic tests to detect communicable disease if not documented in the previous 12 months;
- Other tests and diagnostics, as indicated by exam;
- Initiation of treatment, as indicated;
- Development and implementation of a treatment plan, including recommendations concerning physical limitations and restrictions that effect programming, housing, and job assignment;
- Referral to mental health or dental specialist as indicated; and
- Offender education, particularly of the treatment plan initiated by CDCR is modified or changed. Any change to an existing treatment plan shall be approved by CDCR.

In the event CONTRACTOR’s staff are unable to provide the requisite screenings in the time allowed due to the volume of screenings to be conducted, CONTRACTOR may seek approval to extend the time for such screenings, consistent with the approval of CDCR and the Receiver, and if such extension of time is disallowed, CONTRACTOR may utilize outside contracted services to accomplish said screenings. CDCR shall be given advance notification of the identity and qualifications of said individuals, and review the proposed rate of compensation to be paid to such persons. CDCR shall not unreasonably withhold its consent to such proposed screeners, and shall reimburse CONTRACTOR for their additional costs incurred in complying with this provision in such event.

**Dental Screening, Examination and Treatment** – The CONTRACTOR shall have written policies and procedures to assure dental screenings, exams, radiographs, and treatments are rendered consistent with the CDCR and ACA standards. Comprehensive dental examinations shall be completed within 30 days of arrival from California. The CDCR records sent to the facility will be reviewed for dental history and to identify current dental care that should be continued. Offender transfers between CONTRACTOR Facilities shall include a review of dental records to ensure continuity of care at the arriving Facility.

**Mental Health Screening, Examination and Treatment** – The CONTRACTOR shall have written policies and procedures to assure mental health screenings, evaluations, and treatments are rendered consistent with the CDCR and ACA standards. The CDCR records sent to the Facility will be reviewed for mental health history and to identify current mental health care needs. Any patient having demonstrated mental health needs shall be identified to CDCR, and CDCR shall have the right to request a return of that Offender to CDCR custody.

**Infectious Diseases** – The CONTRACTOR shall have written policies and procedures to support the management and prevent the spread of infectious diseases. A copy of said policies shall have been provided to CDCR prior to the execution of this Agreement.
CONTRACTOR Formulary – The CONTRACTOR shall adhere to the CONTRACTOR formulary. When the only medically appropriate and medically necessary pharmaceutical for an Offender is not on the CONTRACTOR formulary, the CONTRACTOR Medical Director and/or the Health Services Administrator will follow the CONTRACTOR’s procedures for obtaining a waiver.

Initial Provisioning Of Medications – At the time of initial transfer, and at the time of any return of an Offender to or from the Facility, the CDCR or CONTRACTOR, depending on who is releasing custody at the time of transfer, shall provide, at the time the Offender is transferred between the custody of CDCR and CONTRACTOR, a seven (7) day supply of any medications prescribed for that Offender.

Utilization Review/Prior Authorization - CONTRACTOR shall follow the CDCR Utilization Review procedures and, unless the required care is necessitated by an emergency, shall seek advance approval for any non-routine care outside the Facility.

Health Care Records – The CONTRACTOR shall have written policies and procedures to ensure appropriate and confidential management of Offenders’ health care records and health care information. These policies and procedures shall support standardization of preparation, format, documentation, release, and maintenance of the health care record. The health care record created at the Facility is the property of the CDCR and shall be forwarded to CDCR when the Offender is transferred from the Facility. Release of information, including copying charges, shall be conducted in accordance with CDCR policy and only upon approval by CDCR.

Credentialing, Privileging, and Peer Review – Licensed Independent Practitioners (LIPs), which includes physicians, nurse practitioners, and physician assistants, hired by the CONTRACTOR must be approved by California Correctional Health Care Services (CCHCS) Credentialing Review Committee prior to commencement of services. Additionally, CCHCS may conduct clinical performance appraisals of all CONTRACTOR LIP’s providing services to CDCR Offenders, and review all peer reviews of contracted LIPs.

Mid-Level Protocols – The CONTRACTOR must have established protocols and provisions for supervision of mid-level providers. Mid-level providers include nurse practitioners and physician assistants.

Staffing – The Health Care Unit shall be adequately staffed with trained health care professionals and support staff to provide the level and the quality of care defined by the ACA, NCCHC, CCR Title 15, and any court orders. The responsibilities of these staff shall be clearly defined in their job description and shall be consistent with any applicable scope of practice for which they are licensed to function, as appropriate. Appropriate supervisory staff shall monitor performance of these responsibilities. Ultimate responsibility of staff performance lies with the Facility Medical Director and/or the Health Services Administrator.

Staff Training – The Health Services Administrator/Manager of the health services unit shall maintain current copies of licenses, accreditation, and certifications of the professional health care staff as appropriate. All health care services staff shall participate in facility orientation and training in accordance with Facility, ACA, and NCCHC standards.

The Health Care Administrator/Manager shall maintain records of staff participation in facility orientation and annual training, and mandatory Continuing and Professional Education requirements.
4.05.1 Costs – The costs of providing on-site medical, mental health, or dental services through Facility staff or contacted services, shall be considered normal costs incidental to the operation of the Facility and is included in the CDCR Offender per diem rates, except that the CDCR shall pay for:

a) All expenses in excess of $2,500.00 annually, per Offender, for medically necessary, off-site hospital or emergency care. This includes, but is not limited to, medical, surgical, mental health, and dental care delivered in an Emergency Room, practitioner's office, or inpatient or outpatient hospital setting. Provided, however, CONTRACTOR shall be responsible for the costs of any off-site medical care if such care should have been provided on-site through the CONTRACTOR’s provision of routine medical, dental, and mental health services.

b) CONTRACTOR accepts the risk for the first $2,500.00 annually per Offender for medically necessary, off-site hospital, or emergency care. The $2,500.00 annual per Offender limit shifts ongoing costs for typical, routine off-site services from CDCR to the CONTRACTOR (thereby simplifying the reimbursement for such claims and allowing CDCR relief with respect to these routine costs) while limiting the CONTRACTOR’s liability for off-site hospital and emergency care. The parties do not anticipate that every CDCR Offender will incur $2,500.00 in off-site hospital or emergency care, therefore, the per diem does not include $2,500.00 per Offender, per year for this care and there is no pool of funds established based upon $2,500.00 per Offender, per year from which CONTRACTOR retains unspent funds. CONTRACTOR is able to competitively price coverage of off-site medical care by relying on historical Offender medical data and making an assessment of a reasonable annual budget for off-site expenses, knowing that in no event will the liability exceed $2,500.00 per Offender annually. Accordingly, the CONTRACTOR's off-site limit is a risk balancing mechanism only.

c) All HIV or AIDS related inpatient and outpatient medical costs and the costs of providing AZT or other medications therapeutically indicated and medically necessary (as defined in the UHR) for the treatment of Offenders with HIV or AIDS. CONTRACTOR shall notify the CDCR of any Offender diagnosed with HIV or AIDS within three (3) working days.

d) Any costs associated with DNA testing of Offenders. Incidental costs associated with routine blood testing done as part of the disciplinary process or periodic testing required by the CONTRACTOR, or state where the Facility is located, are included as part of the per diem rate.

4.05.2 A co-pay in the amount of $5.00 may be charged to CDCR Offenders for certain medical, dental, and/or vision services requested/initiated by the Offender in accordance with CCR Title 15, Section 3354.2. The co-pay fee will be retained by the CONTRACTOR.

4.05.3 The CDCR shall not be responsible for the payment of elective or experimental medical procedures or for medical care required as a result of negligence or intentional misconduct on the part of the CONTRACTOR, its employees, or subcontractors, or for care which could have been prevented.
4.05.4 Third Party Medical Billing – The CONTRACTOR will work with the CDCR and CCHCS to establish an electronic processing system for all outside medical claims. This process will create a direct connection between the medical provider and CCHCS (i.e.: a Third Party Administrator). The electronic processing system must meet or exceed the industry standard.

4.05.5 Upon return of a CDCR Offender to the CDCR, the CONTRACTOR shall provide the copy of the health records of all health care delivered while under CONTRACTOR’s jurisdiction, including, but not limited to, all Facility health records, dental records, community hospital records, radiology reports and films, consultant reports, and laboratory results. In addition, the CONTRACTOR will provide a health summary prepared by one (1) or more practitioners, appropriate to the complexity of the case.

4.05.6 The parties hereto expressly acknowledge and agree that:

   a) The Offenders to be transferred pursuant to this Agreement to the Facilities owned and/or operated by CONTRACTOR are members of a class of plaintiffs in an action pending in the United States District Court for the Northern District of California Entitled, Marciano Plata et al. v. Brown et al. No.C01-1351 TEH (the Plata Action);

   b) The CDCR is a named defendant in the Plata Action;

   c) The plaintiffs in the Plata Action have alleged that the health care delivered to Offenders in the California prison system is constitutionally inadequate and violates their rights guaranteed by the Eighth and Fourteenth Amendments to the U.S. Constitution;

   d) By order, dated February 14, 2006 (the “February 14 Order”), the Court in the Plata Action (the “Plata Court”) appointed the Receiver (“Receiver”) for the California prison health care system and set forth in detail the duties and responsibilities of the Receiver;

   e) Pursuant to the February 14 Order, the CDCR and “all persons in concert of participation” with the CDCR are required to cooperate fully with the Receiver in the discharge of his duties;

   f) The Offender-class members transferred pursuant to this Agreement are entitled to receive constitutionally adequate health care while housed in the Facilities and shall not, by reason of the transfers, lose their status as members of the plaintiff class in the Plata Action; and,

   g) The transfers of Offenders contemplated by this Agreement are not designed or intended to thwart, delay, or interfere with the Plata Court’s orders or with the Receiver’s exercise of his duties pursuant to the February 14 Order.

CONTRACTOR expressly acknowledges and agrees that it:

   a) Intends to and will provide constitutionally adequate health care to the Offender-class members while they are housed in the Facilities;
b) Is a “person in concert and participation with” the CDCR within the meaning of, and subject to, paragraph VI.A. of the February 14 Order, and has been provided with a copy of the February 14 Order; and

c) Will cooperate fully with the Receiver and will provide the Receiver access to the Facilities and to documents, personnel, and Offender-class members in the Facilities to the same extent as the Receiver is provided access to CDCR facilities, personnel, and prisoners pursuant to paragraph II.E. of the February 14 Order; provided, however, the Receiver’s access to documents and personnel pursuant to this Section shall relate only to such documents and personnel as are directly related to the delivery of medical care to California Offenders in the Facilities and shall not include information related to other jurisdiction’s Offenders or facility information unrelated to the provision of medical care to California Offenders.

The parties hereto acknowledge and expressly agree that with respect to the provisions of Exhibit A, Section 4.05, Medical/Mental Health/Dental, and all subsections of said section, the Receiver is a third party beneficiary of this Agreement and hereby consent to the jurisdiction of the United States District Court for the Northern District of California with respect to any action or proceeding brought by the Receiver to enforce the provisions of such sections.

4.05.7 The parties agree that in the event a court appearance is required before the Honorable Thelton Henderson in San Francisco, California by employees of CONTRACTOR that the expenses incurred by CONTRACTOR in making the employees available for said hearing shall be reimbursed to CONTRACTOR by CDCR. Reimbursement shall include costs of transportation as well as salary costs, increased by 26% to cover fringe benefit. Should the court impose monetary sanctions against CONTRACTOR, CDCR and CONTRACTOR agree to evaluate the circumstances leading to the imposition of said sanctions and in the event it is determined that CONTRACTOR had performed within the scope and requirements of this Agreement and that sanctions were issued in spite thereof, CDCR shall agree to reimburse CONTRACTOR for any sanctions imposed. Should CDCR not agree that CONTRACTOR’s performance, which resulted in sanctions, was consistent with the obligations imposed under this contract, CDCR may refuse to reimburse CONTRACTOR for the sanctions imposed. In such event CONTRACTOR may seek a judicial determination of the obligation for the payment of sanctions pursuant to the provisions set forth in this paragraph.

4.05.8 In the event that CDCR transfers Correctional Clinical Case Management System (CCCMS) Offenders to the CONTRACTOR’s Facilities, the following shall apply:

a) Unless mutually agreed otherwise between CONTRACTOR and CDCR, the total number of CCCMS Offenders shall not exceed 1,000 Offenders across the CONTRACTOR Facilities.

b) The allocation of the CCCMS Offenders between the CONTRACTOR Facilities shall be decided in mutual agreement between the CONTRACTOR and CDCR to allow optimization of CONTRACTOR resources, including staffing.

c) CONTRACTOR’s agreement to house CCCMS Offenders is based upon the staffing requirements of the Mental Health Service Delivery System Program Guide as amended and supplemented, and as interpreted by the CDCR Director.
of Mental Health. In the event that such guidelines are modified, amended, or replaced in such a way as to modify or increase the services, including staffing, required from the CONTRACTOR, the CONTRACTOR shall not be required to make such modifications unless the CONTRACTOR agrees that such modifications are operationally feasible and CDCR agrees to pay for any increased costs, including any and all staffing related costs. In the event CONTRACTOR finds modifications operationally infeasible, CONTRACTOR and CDCR shall come to a mutual agreement in regards to costs associated with the transfer of Offenders back to California or to another mutually agreed upon site.

d) CONTRACTOR agrees to provide monitoring data and reports as required by CDCR.

Section 4.06 Death of an Offender.

4.06.1 In the event of the death of a CDCR Offender, the CONTRACTOR will immediately notify the CDCR Contract Monitor or designee, local coroner, and local law enforcement via telephone and shall have the cause and circumstances of the death reviewed by the coroner of the local jurisdiction. If requested by CDCR, the CONTRACTOR shall obtain an independent autopsy. This autopsy shall be paid for by the CDCR. A certified copy of the death certificate and the Offender’s file and medical records will be forwarded to the CDCR.

4.06.2 The CONTRACTOR shall furnish all information requested by the CDCR, and follow the instructions of the CDCR with regard to disposition of the body. The CDCR will notify the designated next of kin of the deceased Offender, if any, as soon as practicable after death.

4.06.3 All expenses relative to any necessary preparation and shipment of the body shall be the responsibility of the CDCR.

4.06.4 The CONTRACTOR's Chief Medical Officer will communicate on a regular basis with the Office of the Receiver and actively participate in Mortality and Morbidity clinical reviews in the Death Review Committee and other Quality Improvement activities. At all times documentation will be protected by the Medical Peer Review process. The CONTRACTOR will assist COCF in the collection of documents required to be submitted to the Death Review Committee as delineated in the CCHCS September 5, 2008, Memorandum titled "Distribution of Inmate Death Reporting and Review Policy, Effective September 5, 2008," (Attachment 7) and any subsequent death review documentation requirements imposed by the Plata Court.

Section 4.07 Offender Work and Programs.

4.07.1 All eligible Offenders shall be afforded the opportunity to participate in programs, occupational training, and work at the Facilities, unless otherwise medically or administratively precluded. No CDCR Offender shall participate in any program, training, or work outside the fenced Facilities unless approved in writing by the CDCR Contract Monitor or designee.

4.07.2 Eligible Offenders will be productively occupied in work, education, vocational, and/or major habilitation programs, consistent with CCR Title 15, and in accordance with the Offender Program Participation Table (Attachment 8).
4.07.3 Programs shall include: Educational programs (basic literacy, adult basic education, General educational development, ESL (English as a Second Language); recreational programs; cognitive behavioral programs; self-help programs (Alcoholics Anonymous/Narcotics Anonymous (AA/NA)); and vocational/technical programs, as available.

4.07.4 Offenders shall be required to work or participate in educational or vocational programs, consistent with CCR Title 15. However, Offenders shall not be allowed or required to participate in any training or work contrary to the laws of California.

4.07.5 The CONTRACTOR may dispose of, or consume, all products produced by any Offender participating in work or vocational programs. The CONTRACTOR will bear all costs and retain all proceeds there from.

4.07.6 The CONTRACTOR shall daily record the actual hours worked/participated for each Offender (those in work/programs/education/training) on the Work Supervisor’s Time Log (CDC Form 1697) in order that work credit can be calculated by CDCR in accordance with CCR Title 15 (§3045). The forms shall be provided at CDCR expense. The completed forms (white copy) shall be collected and mailed to the Contract Monitor by the 15th of the following month, or CONTRACTOR shall collect and forward other documentation as deemed appropriate by CDCR.

4.07.7 In case of hobby craft programs, the crafts may be sold and proceeds of any sale retained by the Offender.

4.07.8 In accordance with the expectations of CDCR, CONTRACTOR shall provide the below detailed annual goals for Offender programs. The CONTRACTOR shall provide reports to CDCR with respect to these goals as detailed below. In the event that, after reviewing these reports and discussing any concerns with the appropriate CONTRACTOR staff, CDCR determines that deficiencies exist in meeting the goals stated herein, CDCR may request that CONTRACTOR provide a Corrective Plan of Action for resolving these deficiencies and updates of these Plans of Action shall be provided to the CDCR Contract Monitor on a monthly basis until such deficiencies are resolved. The annual goals and associated reports shall be as follows:

4.07.8.01 Provide Chaplain and Religious Services for the CDCR population in order to fulfill the Facility’s responsibility of ensuring that all Offenders can voluntarily exercise their constitutional rights to religious freedom. Each Facility chaplain will submit a monthly report detailing religious services provided, Offender attendance, and volunteers utilized to provide religious services.

4.07.8.02 Provide a mechanism for assessment and admission into appropriate modality of treatment for therapeutic substance abuse. Each Facility will submit a quarterly report of assessments, intakes, discharges, and completers in addictions treatment programs, or CONTRACTOR shall collect and forward other documentation as deemed appropriate by CDCR.

4.07.8.03 Demonstrate Offender progress by tracking “phase-ups” in addiction treatment programs. Each Facility will submit a quarterly report of “phase-ups” or CONTRACTOR shall collect and forward other documentation as deemed appropriate by CDCR.
4.07.8.04 Assess CDCR Offenders interested in educational programming to determine appropriate placement. Each Facility will submit a quarterly report of assessment results for education programs, or CONTRACTOR shall collect and forward other documentation as deemed appropriate by CDCR.

4.07.8.05 CDCR Offenders enrolled in academic education programs shall be reassessed using an appropriate instrument every 120 days. Each Facility will submit a quarterly report detailing reassessment results, or CONTRACTOR shall collect and forward other documentation as deemed appropriate by CDCR.

4.07.8.06 Each Facility will maintain a vocational advisory committee. Each Facility will submit a quarterly report summarizing the activity of the vocational advisory committee.

4.07.9 Offenders are eligible for workers’ compensation benefits consistent with CCR Title 15, Section 3046 for injuries sustained while performing assigned work while imprisoned. The CONTRACTOR shall provide Offenders with access and copies (upon request) of the CDCR's guidelines covering workers’ compensation. At a minimum, the CDCR's guidelines shall be available at the Offender assignment office (or office of person responsible for Offender assignments) and at, or near, the work location (via the work supervisor). CDCR shall be responsible for payment of any benefits for CDCR Offender workers compensation claims as required by California law, including, but not limited to, California Labor Code section 3370(a). CONTRACTOR shall not be responsible for the payment of any workers compensation benefits to CDCR Offenders.

Section 4.08 Religious Opportunity.

The CONTRACTOR will provide reasonable time, accommodations, and space for religious services in keeping with facility security and other necessary institutional operations and activities. Religious services should be provided in accordance with CCR Title 15.

Section 4.09 Recreation/Library/Quarterly Packages and Canteen - Barber.

Offenders shall be provided indoor and outdoor recreational opportunities on a daily basis except for Offenders in lockdown/modified program/Administrative Segregation status. The CONTRACTOR shall provide recreation for Offenders in Administrative Segregation in accordance with CCR Title 15. Offenders will be personally observed by staff during these recreational opportunities. Offenders will be provided with commissary service in accordance with established CDCR policies. CDCR shall reserve the right to disapprove any canteen items for CDCR Offenders. CONTRACTOR shall endeavor to supply canteen items similar in price and nature to those provided to California Offenders by CDCR. CONTRACTOR reserves the right to exclude any canteen item it deems to be a security risk. Revenues may be used to pay all operating expenses of the canteen including, but not limited to, commissary worker salaries and benefits on a pro rata basis, based on the ratio of the total sales to CDCR Offenders to the total canteen sales to all Offenders. Any profits from the commissary sales to CDCR Offenders operation shall be deposited in the Offender Welfare Fund, to be administered in accordance, and in a manner consistent with established CDCR policies. CONTRACTOR will implement a quarterly package program in accordance to CCR Title 15. CONTRACTOR shall supply quarterly package items similar in price and nature to those provided to California Offenders by
CDCR. CONTRACTOR and CDCR reserve the right to exclude any quarterly package item deemed to be a security risk.

4.09.1 The CONTRACTOR shall establish and maintain a plan of operation for on-site Offender barber services. Barber service procedures must provide for the safety, security, and maintenance of the designated area, tools, solutions, equipment, and comply with all applicable health and sanitation codes. The number of Offender barber assignments shall be consistent with the need to readily service the Offender population. The CONTRACTOR should strive to maintain an ethnically diverse barber's service in both Offenders assigned and services provided. The CONTRACTOR shall ensure that barber services are directly available and accessible to the Offender population. Hours of operation must therefore be scheduled in correlation to other facility programs, activities, and Offender assignments. The barber service shall comply with acceptable and applicable codes, practices, standards, and requirements established by the appropriate state regulatory agency in the state where the Facility is located and ACA standards. The CONTRACTOR shall be responsible for developing a plan of operation for Offender barber services that, at a minimum, must: (a) ensure that tools are properly inventoried, maintained and accounted for at all times; (b) provide for trained Offender barbers that are hired consistent with Facility policy and ACA standards; and (c) ensure that Offender barbers and services are provided to serve an ethnically diverse Offender population. The CONTRACTOR shall provide a designated barber area, centrally located within the Facility and adjacent to the Offender population, which is readily accessible to all Offenders for the personal maintenance of hair grooming standards in accordance with CDCR requirements. The CONTRACTOR may also provide multiple designated Offender barber areas equitably located within various areas of the Facility to achieve the same purpose within the framework of safety and security. In either case, the barber area(s) shall be centrally located and of sufficient size and dimensions to adequately service the entire Offender population. Clear lines of sight shall be provided from designated staff/posts. The CONTRACTOR shall ensure that CDCR principles of proper tool control is incorporated and adhered to by Offenders and staff alike. At a minimum, the barber area shall be equipped with a sink, power outlets, and a chair.

4.09.2 The CONTRACTOR shall maintain an Offender library in the Facilities consistent with DOM Section 101120.1. The library shall include a logical organization of materials to satisfy the needs of the user; information services to locate facts as needed; a reader’s advisory service that provides users with suitable materials; promotions of the library materials through publicity, a list of books, special programs and other appropriate items; and a congenial library atmosphere.

The library stock formula shall comply with established departmental requirements (i.e.: Fiction: .55 x population x seven (7) books; Non-Fiction: .55 x population x five (5) books). Additionally, the library must have the following material available to general population Offenders: California Penal Codes; California State Prisoner's Handbook (published by the Prison Law Office); CCR Title 15, Division 3, Chapter 1 “Rules and Regulations of the Director of Corrections” (English and Spanish versions); and the CDCR DOM.

At a minimum, the library services shall be coordinated by a person (CONTRACTOR’s staff) who must ensure that the library is operating in accordance with the CDCR requirements. This person shall possess, at a minimum, the ability and knowledge of how to organize and run a small library, using the standard classification scheme (i.e.: Dewey Decimal System for nonfiction), and an effective circulation (book tracking)
method. Library materials must comply with DOM and should be augmented by reference materials necessary to meet the needs of the facility education programs, consistent with the accepted library practices contained in CCR Title 15. The term “Facility librarian” refers to a person (CONTRACTOR’s staff) meeting the requirements in this Agreement. CONTRACTOR shall provide some reference material and books in Spanish.

Additional guidelines are as follows:
1) A library shall be provided at the Facility at the CONTRACTOR’s expense and in accordance with DOM and the Agreement. The CONTRACTOR shall replace library stock consistent with this section.
2) The CONTRACTOR should provide, at a minimum, one (1) Offender work assignment position with duties to include checking out and obtaining return of library books and materials. One (1) typewriter, manual or electric, should be provided for this work position.
3) Library volumes should be made available on shelving sufficient to display all titles.
4) Library hours are to be scheduled to maximize accessibility to the Offenders for a minimum of 30 hours a week.
5) The CONTRACTOR shall provide a legal law library at the Facility consistent with DOM Section 101120.9 et al and CCR Title 15 Chapter 3124.
6) The CONTRACTOR shall provide security coverage consistent with minimum custody requirements and supervision of Offenders during library hours.

Section 4.10 Inmate Advisory Committee.

The CONTRACTOR agrees that the Facility Wardens will establish an Inmate Advisory Committee at each Facility housing CDCR Offenders consistent with CDCR regulations. Copies of the meeting minutes will be provided to the Contract Monitor or designee on a monthly basis.

Section 4.11 Telephone.

Access to telephone service shall be provided to CDCR Offenders in accordance with CCR Title 15 (§ 3018, 3044, 3045). CONTRACTOR, nor any third party, shall profit from Offender telephone service systems; however, should CDCR require CONTRACTOR to provide video visiting, CONTRACTOR and CDCR shall come to a mutual agreement regarding an increase in charges for the Offender telephone system to offset the cost of providing video visiting. All telephone commissions, revenue, etc. shall be forwarded directly to CDCR for processing pursuant to DOM.

Section 4.12 Clothing.

The CONTRACTOR will be responsible for laundry, repair, and replacement of Offender clothing during the CDCR Offender’s incarceration at the Facility to ensure clean clothes and bedding on a weekly basis. Upon admission, each Offender shall be issued the following:
- Work shoes, one (1) pair.
- Sheets, two (2).
- Pillow case, one (1).
- Towels, two (2).
- Blankets, two (2).
- Pants (uniform or jeans), three (3).
- Shirts (uniforms or chambray), three (3).
- Undershirts, four (4).
- Socks, six (6) pair.
- Undershorts, four (4) pair.
- Jacket, one (1).
- Belt, one (1) (if jeans are issued).
- The distinctive, protective and/or extra clothing required by the climate and/or the Offender’s job assignment.

Other clothing and linen items shall also be issued to the Offender as detailed within CCR Title 15. CONTRACTOR shall provide laundry services to the Offender at no charge to the Offender in accordance with established CDCR policies and CCR Title 15.

Section 4.13 Meals.

The CONTRACTOR will provide all CDCR Offenders with nutritional meals consistent with established CDCR policies. Food service will meet established governmental and safety codes, while adhering to American Dietetic Association, National Academy of Sciences, ACA standards, and local, state, and federal requirements. The CONTRACTOR’s Facility will have a four (4) week, five (5) week, or six (6) week cycle menu. Therapeutic/special diets shall be provided as prescribed by appropriate clinicians. Religious diets will be provided for Offenders whose religious beliefs requires adherence to religious dietary law. Religious diets shall be approved by the recognized Facility religious authority. CONTRACTOR shall provide meat that has been certified as Halal as a religious meat alternative (RMA) at the dinner meal. CONTRACTOR shall procure RMA meat from a vendor(s) capable of providing meat that has been certified as Halal. A Registered Dietician or Nutritionist shall approve all menus, and meals shall be prepared in compliance with the approved menus. Menus shall be submitted to the Contract Monitor for review on a monthly basis.

Section 4.14 Mail.

Offenders will be provided with mail service. Indigent Offenders shall be provided with supplies for correspondence for up to the price of twenty, one (1) ounce first class letters per month. However, no request for mailing of verified legal pleading will be denied under this provision regardless of postage limit or financial status of the Offender. The CONTRACTOR is entitled to recoup postage fees when the Offender has sufficient funds in his account. Pursuant to the DOM, all non-confidential Offender mail, incoming or outgoing, is subject to being read by designated staff. This reading of mail shall be for cause only. All incoming and outgoing mail and packages shall be searched for contraband.

Section 4.15 Visitation.

The CONTRACTOR shall provide space, opportunity, furniture, and equipment for visitation. Contact visitation shall be provided unless individual security concerns dictate otherwise. The CONTRACTOR shall adopt flexible visiting policies for visitors traveling from out of state. Visitors on CDCR’s approved visitors list shall be approved by the CONTRACTOR unless security concerns indicate otherwise. Minimum hours of visitation shall be consistent with CDCR regulations. If space is available at the Facility and at the request of CDCR, CONTRACTOR shall provide space appropriate for conjugal visits. The provisioning of said space shall be the expense and obligation of CONTRACTOR.
Section 4.16 Offender Property.

CDCR Offenders shall be allowed to possess personal property as outlined in CCR Title 15. Exclusions may be granted based on facility security requirements. CONTRACTOR shall provide the CDCR allowable property lists prior to the implementation of this Agreement. With the consent of CDCR, CONTRACTOR may permit items of property not allowable in California facilities. It shall be the responsibility of CONTRACTOR to ensure that any such property is not returned with the Offender to California. CONTRACTOR will follow CDCR regulations on disposition of property. CONTRACTOR shall compensate Offenders for loss or damaged property due to the negligence of the CONTRACTOR in accordance with applicable remedies in CCR Title 15. CONTRACTOR shall not unduly delay resolution of property issues.

Section 4.17 Offender Appeals.

The CONTRACTOR will handle all CDCR Offender appeals/grievances related to CDCR Offenders consistent with CDCR Policy. CDCR shall retain final authority on all issues of appeal. The CONTRACTOR shall provide a monthly summary of appeals by volume and type to the CDCR Contract Monitor.

Section 4.18 Access to Courts.

The CONTRACTOR will ensure all CDCR Offender court related access is in compliance and consistent with the provisions of DOM and CCR Title 15. Regardless of housing, the CONTRACTOR will provide opportunity for meaningful access to federal and California State legal materials at the Facility in accordance with CCR Title 15. On rare occasions, when direct access cannot be provided, the CONTRACTOR shall provide access consistent with DOM and CCR Title 15. The CONTRACTOR shall provide CDCR Offenders legal materials required to meet constitutional standards via computer and appropriate software including California specific material. The CONTRACTOR shall provide a secure and monitored location to house said computer and associated peripherals. The CONTRACTOR shall provide federal law material sufficient to meet constitutional standards, such as: typewriters, including ribbons and typing paper; notary services (fees apply as per CCR Title 15); copying services, including copier paper; and legal size envelopes. Items such as paper and typewriters shall be provided and shall be available free of charge to indigent CDCR Offenders. CDCR Offenders need not be afforded access to copiers; however, the CONTRACTOR shall provide a copy of specific information, such as a page from a law book, upon request by a CDCR Offender. A reasonable and consistent copy fee shall be set by the CONTRACTOR. The CONTRACTOR shall provide access to law material when staff has scheduled absences due to vacations, extended leave, or training.

Section 4.19 Offender Records and Progress Reports.

4.19.1 The CONTRACTOR will handle all CDCR Offender Records and ensure compliance consistent with the provisions of DOM and CCR Title 15. Offender institutional records regarding CDCR Offenders while at the Facility shall be collected and maintained on-site by the CONTRACTOR in accordance with CDCR record keeping practices and operating requirements governing confidentiality. The Offender files will not be maintained inside housing units or be easily accessible to the Offender population. Upon request, all records, reports, and documents related to CDCR Offenders, including Offender work/education vocation records, shall be made available immediately to the CDCR Contract Monitor for review. When an Offender is transferred from the Facility, the record provided by the CDCR and additional information compiled while the CDCR
Offender was at the Facility will be updated and transported with the CDCR Offender to his new location. The record consists of reports, timesheets, staff memos, correspondence, and other documentation relating to behavior of the CDCR Offender.

4.19.2 All warrants/holds/detainers received by the CONTRACTOR for a CDCR Offender shall be forwarded to the CDCR Contract Monitor within 24 hours.

4.19.3 CONTRACTOR will provide approved, selected CDCR medical personnel electronic access to the CONTRACTOR’s Electronic Medical Record (IMS 2). All access will comply with HIPAA.

Section 4.20 Transportation & Security.

The CONTRACTOR will provide security for Offenders assigned to the Facility whether in the Facility or elsewhere. The CONTRACTOR will provide transportation and transportation staffing consistent with CCR Title 15 and DOM to and from medical appointments, urgent and emergent medical care, and local, state, and federal court appearances within a 150 mile radius of the Facility at CONTRACTOR’s expense.

Section 4.21 Removal of Offenders from the Facility.

Except for emergency health care needs, CDCR Offenders shall not be assigned away from the Facility for work, programing, etc. without prior written authorization from the CDCR Contract Monitor.

Section 4.22 Use of Force.

The CONTRACTOR’s use of force policy and training program for CONTRACTOR staff shall be approved by the CDCR prior to Offenders being transferred to the Facility and consistent with the CDCR Use of Force Policy as well as any other applicable use of force law applicable to the Facility or its operations. Following any use of force, an incident report shall be prepared and the CDCR staff shall be notified pursuant to Exhibit A, Scope of Work, Section 4.24, Notification of Incidents, Emergencies, Escapes, and Discipline. Video copies of Use of Force incidents and all applicable reports will be provided to CDCR within timeframes set forth in CDCR policy or as mutually agreed upon. Any incidents of inappropriate or excessive force will be immediately reported to CDCR and local law enforcement.

4.22.1 CONTRACTOR shall utilize only those weapons, munitions, and equipment authorized by CDCR

Section 4.23 Escapes.

In the event of an escape by a CDCR Offender(s) from the Facility’s physical custody, the CONTRACTOR shall, in addition to efforts to apprehend such CDCR Offender(s), immediately notify the CDCR Administrative Officer of the Day (AOD), CDCR I.D./Warrants Unit, and the local law enforcement agencies as required by state statute in the same manner it uses for any other Facility escapees. CONTRACTOR is responsible for reasonable costs associated with an escape, including the cost to dispatch CDCR personnel to assist in the apprehension, or conduct an after action review, and including all costs associated with any such escape which are assessed against CDCR by third parties. Annually, or upon revision, the CONTRACTOR shall provide CDCR Contract Monitor or designee with a listing of emergency contacts; including, but not limited to, AOD contact information.
Section 4.24 Notification of Offender Incidents, Emergencies, Escapes, and Discipline.

4.24.1 The CONTRACTOR will handle all CDCR Offender related incidents, emergencies, and escapes in compliance with the provisions of DOM and CCR Title 15 unless it conflicts with state laws, in which case state laws control. Incidents involving/impacting CDCR Offenders are to be reported using the established CDCR-approved reporting format. Such incidents are to be reported to the CDCR Contract Monitor as soon as reasonably practical after the incident occurrence. The CONTRACTOR and CDCR will provide each other with a list of names, phone numbers, e-mail addresses, and fax numbers for personnel to whom inquiries regarding fiscal, medical, and operational matters should be directed. For incidents involving any Offender, the CONTRACTOR will send to the CDCR Contract Monitor reports on the incident on a timely basis, consistent with CDCR policy.

4.24.2 The CONTRACTOR will handle all CDCR Offender disciplinary related matters according to the applicable provisions of DOM and CCR Title 15. Upon the CDCR Contract Monitor's request, within 14 calendar days following any incident, a critical incident review will be conducted to evaluate any deficiencies or training needs, and a plan of action will be completed on any items requiring corrective action.

4.24.3 The CONTRACTOR will notify the CDCR Contract Monitor or COCF AOD immediately (24 hours a day) by telephone for any:
   a) Offender escape;
   b) Any use of force (including use of deadly force);
   c) Assault, including sexual assault, by an employee, Offender, or civilian;
   d) Disturbance involving three (3) or more Offenders;
   e) Death of an Offender;
   f) Rape of an Offender;
   g) Property destruction rendering a living unit or support service area unusable;
   h) Hostage situation;
   i) Any serious interruptions to institutional services;
   j) Felony behavior by staff or Offenders involving CDCR.

All other incident reports, medical pre-authorizations, notices of emergency, medical treatments, and removal of Offenders from the Facility shall be provided to the CDCR Contract Monitor within 24 hours of the incident. In addition to those incidents listed above, all non-routine Offender movement from the Facility, including emergency medical moves and removals from population to a Facility deemed appropriate and operated by the CONTRACTOR, and other such moves shall also be reported as soon as possible, but not longer than 24 hours of the incident.

4.24.4 Disciplinary reports, reclassification requests, or diagnoses that an Offender has a serious medical condition shall be provided to the CDCR Contract Monitor and Receiver's Healthcare Monitor, if designated, weekly. Additionally, the CONTRACTOR shall forward to the CDCR Contract Monitor a monthly report detailing the disciplinary actions taken on CDCR Offenders. The content and form of the report will be mutually agreed upon by both parties to this Agreement. Daily Offender movement sheets and daily activity reports shall be provided to the Contract Monitor as well.

4.24.5 The CONTRACTOR will provide a monthly FDCR report to the CDCR Contract Monitor that chronicles/summarizes significant activities occurring during the preceding month.
4.24.6 The CONTRACTOR shall furnish copies of any regularly generated reports that are requested by the CDCR except for those reports which contain confidential financial or company proprietary information unrelated to CDCR Offender case, custody, or housing.

Section 4.25 Earned Time/Good Time.

The CONTRACTOR shall furnish specific information consistent with CCR Title 15 to the CDCR for purposes of award or forfeiture of earned/good time for eligible Offenders. The final decision on awarding or forfeiture of earned/good time rests with the CDCR.

Section 4.26 Sentence Computation.

The CONTRACTOR will furnish the CDCR with the following information for sentence computation purposes: infractions, work assignments, program assignments, and performance. The CONTRACTOR will assist in providing documents as necessary to ensure compliance with CCR Title 15. The final decision with respect to sentence computation rests with CDCR. Sentence computation will be done by the CDCR. The CDCR will furnish adjusted release dates to the CONTRACTOR as necessary.

Section 4.27 Classification.

The CONTRACTOR will participate, as required, in all CDCR Offender classification matters and ensure compliance consistent with the applicable provisions of DOM and CCR Title 15. CONTRACTOR must adhere to all ACA, NCCHC, Court mandates, and CDCR regulations concerning CDCR Offender placement into administrative segregation including, but not limited to, those specific guidelines applicable in the Coleman class action as applied to Coleman class members placed in administrative segregation. In the event of a conflict in application of the above, the CDCR Contract Monitor shall be consulted for appropriate action. Should CDCR find that it is in the best interest of CDCR and CDCR determines that CONTRACTOR’s staff is sufficiently trained, CDCR reserves the right to delegate some or all classification matters to CONTRACTOR.

Section 4.28 Facility Space for Hearings, Inspections, Audits, and Contract/Healthcare Monitors.

4.28.1 Adequate facilities for any hearings, inspections, audits, and related CDCR case management activities including: furniture, equipment, on-site clerical support, and security staff, shall be made available to CDCR employees or designated representatives.

4.28.2 Unless required more frequently by law, standard and/or corporate/local policy, the CONTRACTOR will complete documented formal inspections of the following areas, according to stipulated schedule: Security per shift, Sanitation monthly, Fire/Safety quarterly, and Environmental Health annually.

Copies of the inspection reports, including Quality Assurance (QA) reports and plans of correction, including action taken to correct noted deficiencies to date, will be submitted to the CDCR Contract Monitor. Plans of Correction will be updated monthly until action item(s) are resolved. Proof of practice may be requested by CDCR.
4.28.3 The Facility will complete audits in accordance with CCA policy and ACA standards. CDCR may also conduct audits, and a copy of any such audits shall be provided to CONTRACTOR. CDCR may make a request for a Plan of Correction from CONTRACTOR to be provided within 30 days.

4.28.4 Financial Audit - The CDCR and/or its designee may conduct audits or reviews of the CONTRACTOR's financial records as they relate to the contract whenever deemed necessary or appropriate by the CDCR. The CONTRACTOR shall be responsible for ensuring auditors have access to the Facility (including areas where records are kept), providing an appropriate work area, providing necessary staff escorts, and facilitating availability of CONTRACTOR staff for purposes of discussions related to the purpose of the audit.

Section 4.29 Public Information.

The CONTRACTOR will process all CDCR Offender publicity issues or requests for information consistent with the applicable provisions of DOM and CCR Title 15. CONTRACTOR shall not be authorized to release publicity concerning CDCR Offenders. They shall not release personal histories or photographs of CDCR Offenders or information concerning their arrivals or departures, except as provided herein. All requests shall be forwarded to the CDCR Office of Communications. CONTRACTOR shall notify COCF of any known or anticipated significant media issues involving any Offenders housed in CONTRACTOR’s Facilities.

Section 4.30 Inspections.

The CDCR and/or the Receiver shall have the right to inspect and/or audit the Facility at its discretion with or without advance notice. CONTRACTOR reserves the right to deny access during off hours (defined as the period between 8PM and 8AM) to individuals not identified previously to them either in this contract or otherwise in writing. In such event, prior to denying authorization, CONTRACTOR shall first contact the CDCR Contract Monitor for direction and/or approval authority. CONTRACTOR reserves the right to request proper identification prior to admission in all cases.

Section 4.31 Offender Account Deductions (Restitution) Collection and Accounting.

CONTRACTOR shall be responsible for collecting restitution from the wages and account deposits of Offenders who owe restitution, pursuant to Penal Code § 2085.5, as further detailed in CCR Title 15, Section 3097. As of the date of this contract, that amount is 50% or the balance owing, whichever is less. In addition, an administrative fee of 10% of the deduction shall be deducted to reimburse administrative costs, for a maximum deduction of 55% of the Offender’s wages and deposits. By entering into this Agreement, CONTRACTOR acknowledges that CONTRACTOR is responsible for satisfying CDCR’s restitution obligations under such regulations as they currently exist and as they may be amended in the future.

CONTRACTOR shall collect restitution fines beginning with the oldest first. CONTRACTOR shall collect direct orders of restitution when notified by CDCR to activate the direct order, in which case it shall be collected upon as first priority, above any restitution fines, as expressed in penal code § 2085.5.

CONTRACTOR shall hold such funds in an interest-bearing account in trust for the State for the purposes set forth in said statute and regulations, and shall not commingle such funds with CONTRACTOR’s own funds or with any other funds.
The CONTRACTOR shall also ensure that the restitution collections and administrative fees are not commingled and are submitted to the Department separately (by separate checks).

Note – fines and direct orders may have the same case number but must be accounted for separately.

CONTRACTOR shall at all times keep an accurate and up-to-date accounting of all such funds and restitution information and shall remit the Offender fund collections and associated Offender case information to CDCR as directed. By the 10th of each month following collections, CONTRACTOR shall forward the amount of restitution and administrative fees to:

Inmate Accounting Branch,
P.O. Box 276088,
Sacramento, CA 95827

The remittance shall include an itemized statement which includes the CDCR number, Offender name, case number, sentencing date, sentencing county, designation of fine or direct order, original fine/order amount, amount of restitution collected, date(s) of deductions, amount of administrative fees collected, and balance still owing. The remittance must be subtotalled by restitution fines and direct order amounts. In addition, CONTRACTOR shall timely provide an accounting of all such funds to CDCR at any time upon request. Any such restitution funds remaining in CONTRACTOR’s possession at the end of the contract shall be remitted to the State for proper disposition pursuant to said Statute and regulations. Upon mutual agreement or as deemed necessary by CDCR for the efficient management of Offender restitution the CONTRACTOR shall receive and transmit the restitution collection data through an electronic interface with CDCR, Restitution, Accounting and Canteen System (RACS). The design, testing, and documentation of the CONTRACTOR’s interface shall be subject to CDCR’s approval and must be utilized and supported without additional cost to CDCR.

Section 4.32 Policy and/or Procedure Changes.

The CONTRACTOR will process all policy and procedural changes consistent with the applicable provisions of DOM and CCR Title 15. The Warden or designee shall be responsible for the posting and distribution, as necessary, of CDCR regulatory or court mandated notices to Offenders and shall substantiate such postings/distributions on the applicable CDCR form.

Section 4.33 Quality Assurance and Initial Security Audit.

The CONTRACTOR shall perform customary and usual Quality Control Audits of the Facility as well as associated Corrective Plans of Action and provide those to CDCR upon completion. CONTRACTOR agrees to include in those audits, such items for review, in addition to those reviewed in the previous audit, such items shall be provided by to CDCR upon completion. CDCR shall be responsible for providing such reports and Corrective Plans of Action to the Receiver and Special Masters upon request and shall advise CONTRACTOR when providing such reports. CONTRACTOR shall have a routine physical plant maintenance schedule and review of the compliance with scheduled maintenance shall be a part of the QA process. Any significant issues will be reported to the Contract Monitor.

Section 4.34 Tobacco – Prohibitions.

No CDCR Offender will be allowed to use, possess, or purchase any tobacco products. Nor shall they be subject to second hand smoke from staff or offenders from other jurisdictions who
may be housed in the Facility. However, consistent with CCR Title 15, the use of tobacco products may be approved by CDCR for use in the CONTRACTOR’s Facilities for Offender religious ceremonies.

Section 4.35 Lockdown/Modified Program.

CONTRACTOR must report any lockdowns or modifications of programs for the CDCR Offender populations, including compilation of CDCR documentation in accordance with CCR Title 15. CONTRACTOR must submit a written unlock plan utilizing approved forms for approval by Contract Monitor prior to resuming the normal or modified program. CONTRACTOR shall not unduly delay return to normal program for any population that is placed on lockdown or modified program.

Section 4.36 Research.

No research on CDCR Offenders shall be conducted without prior written CDCR approval. CONTRACTOR shall comply with CDCR research requests regarding CDCR Offenders to the extent such requests do not result in increased costs to CONTRACTOR or cause staff to deviate from primary duties.

Section 4.37 Inmate Welfare Fund

The CONTRACTOR shall establish an Inmate Welfare Fund (IWF) account system for the benefit of the Offenders housed at the Facility in accordance with Penal Code Section 5006, DOM Sections 23010 and 53110, and CCR Title 15, Subchapter 3, Article 4. The CONTRACTOR shall deposit IWF funds into a separate, interest bearing account that is insured by the Federal Deposit Insurance Corporation (FDIC). IWF balances exceeding $100,000.00 shall be placed into another additional FDIC insured account. The IWF funds shall only be used for the benefit, education, and welfare of all Facility Offenders such as, but not limited to: (a) establishment and operation of a canteen; (b) purchase of canteen products; and (c) establishment and operation of a facility hobby shop program. All net proceeds from the canteen, hobby shop, hair styling area, vending machines, or funds assigned by Offenders shall be deposited in the IWF in accordance with DOM. Expenditure(s) from the IWF must be in compliance with DOM. Each Facility shall budget IWF expenditures so that expenditures shall not exceed budget allocations and revenues from IWF activities.

The IWF shall act as a trust account for the benefit and welfare of Offenders. The CONTRACTOR may deduct 10% from Offender donations for deposit in the IWF to offset transaction processing costs. Moneys collected from sales of products, commodities, or services shall be subject to the deduction based on gross sales. No form of coercion shall be used on any Offender to participate in a fund raising campaign or make a non-voluntary donation.

Annual IWF Budget: The CONTRACTOR shall prepare and submit an annual IWF budget to the CBU for review and approval by May 1st, beginning May 1, 2016, for the upcoming fiscal year. In accordance with DOM Section 23010.8 the CONTRACTOR must prepare quarterly IWF fund statements and submit to the CBU Chief. All entries to the IWF must be supported by source documentation. All IWF expenditures must be in accordance with DOM.

Upon deletion of any CONTRACTOR Facility pursuant to this Agreement, or termination of this Agreement, all IWF funds will be returned to CDCR for processing pursuant to DOM.
Section 4.38 Inmate Trust Fund

The CONTRACTOR shall establish an Inmate Trust Fund (ITF) accounting system for recording and maintaining all transactions affecting Offender trust accounts (in accordance with applicable DOM Sections 51120.12, 51121.15, 53110.5.3, 54070.4 and 54070.5). All transactions and reconciliations shall be supported by sufficient and relevant source documentation. The accounting system shall maintain individual Offender accounts and moneys shall not be commingled with any other funds. ITF shall be deposited into an interest bearing account guaranteed by the FDIC. ITF balances exceeding $100,000.00 shall be placed into another interest bearing FDIC insured account. The CONTRACTOR shall not utilize Offender trust funds for Facility expenditures without the authorization of the Offender and/or the CBU Chief or designee through the disciplinary process.

Additionally, the CONTRACTOR is responsible for the following Trust Fund transactions:

1) Upon an Offender’s transfer to another Facility or CDCR prison to forward the individual Offender trust funds to the transfer location;
2) To handle unclaimed Offender trust fund balances in accordance with CCR Title 15.
3) Restitution shall be calculated, deducted, and processed according to Exhibit A, Scope of Work, Section 4.31, Offender Account Deductions (Restitution) Collection and Accounting.

Section 4.39 Written Mutual Aid Agreements

The CONTRACTOR must have CBU approved Written Mutual Aid Agreements with local and State law enforcement (pursuant to CCR Title 15 and PC Sections 5004 and 5004.5) and related criminal justice agencies for assistance in emergency situations at the Facility. These agreements must, at a minimum, identify the procedures for initiating the agreements and the cooperative emergency measures to be taken to prepare for, or respond to, emergency situations. (Employee job action procedures must be identified as a separate plan.) Development of these agreements shall be the responsibility of the CONTRACTOR. All written mutual aid agreements shall be forwarded to the CBU Chief or designee for approval. Mutual aid agreements must not jeopardize the Facility or violate minimum safety standards. All agreements must, at a minimum, be approved by CBU (in concert with the CDCR’s Emergency Operations Unit and Office of Business Services) prior to activation and revised/updated on an annual basis thereafter. The CBU Chief or authorized designee shall be the designated CDCR approval authority required for all mutual aid agreements. A copy of the current signed Mutual Aid Agreements must be submitted to the CBU Chief.

The CDCR may seek reimbursement from the CONTRACTOR for actual costs of all or part of any mutual aid services rendered as a result of CONTRACTOR negligence, error, or failure to perform. Memorandum of Understanding(s) may be developed pending formal contract agreement.
Article V

FACILITY EMPLOYEES

Section 5.01 Independent Contractor.

The CONTRACTOR and its employees are associated with CDCR only for the purposes, and to the extent, set forth in this Agreement. With respect to the performance of the services set out herein, the CONTRACTOR is and shall be an independent CONTRACTOR and, subject to the terms of this Agreement, shall have the sole right to manage the operations of the Facility. The CONTRACTOR shall perform its duties hereunder as an independent CONTRACTOR and not as an employee. Neither the Facility nor any agent or employee of the CONTRACTOR has the authority, actual or implied, to bind, incur liability, or act on behalf of the CDCR or the State. Neither the CONTRACTOR nor any agent or employee of the CONTRACTOR shall accrue leave, retirement, insurance, bonding or any other benefit afforded to the employees of California as a result of this Agreement.

Section 5.02 Personnel.

Personnel shall be retained to deliver 24 hour care and supervision to incarcerated individuals, as well as administrative and support service personnel for the overall operation of the Facility, in accordance with CONTRACTOR operating requirements. All personnel hired shall be subject to background checks to include both federal and state criminal records checks and a federal criminal search based on social security number and residence to include a records search based on any discovered undisclosed addresses, as well as an assets control search. All background checks shall be completed prior to CDCR Offender contact. Such policies and procedures, including a position description that clearly states the experience and skill requirements of the position, shall be provided for all Facility management positions. CDCR shall be notified in the event of a vacancy in a management position affecting CDCR populations. CONTRACTOR shall take under advisement legitimate CDCR requests that specific staff, contractors, or volunteers not be allowed to work with, or in proximity of, CDCR Offenders. CONTRACTOR shall make all efforts to reasonably comply with such requests. CONTRACTOR shall require all employees and applicants to document current relationships with CDCR Offenders and/or parolees. Additionally, it is required that CONTRACTOR requires employees to report any newly developed relationships with CDCR Offenders and/or parolees as the relationships arise. CONTRACTOR shall require all employees and applicants to report any negative law enforcement contact. CONTRACTOR shall provide CDCR Contract Monitor all such documents and reports.

Section 5.03 Training.

All personnel shall be trained in accordance with CONTRACTOR personnel policies and procedures. CDCR will provide, at least annually, training regarding their policies and procedures and Security Threat Groups to CONTRACTOR's personnel at a mutually agreed upon site, as CDCR or CONTRACTOR may request.

CONTRACTOR shall be responsible for all expenses associated with the transporting of CONTRACTOR's employees to that site for training and for CDCR staff as mutually agreed upon.
CONTRACTOR agrees to run simulated drills (i.e. alarm response drills, man-down drills, Special Operations Response Team training, escape pursuit drills, and staff accountability drills) as needed to ensure the safe operation of the Facilities.

CONTRACTOR will report to CDCR Contract Monitor or designee through mutually agreed upon procedure to track these drills.

Section 5.04 Worker's Compensation.

CONTRACTOR hereby represents and warrants that CONTRACTOR is currently and shall, for the duration of this Agreement, carry workers’ compensation insurance, at CONTRACTOR's expense, or that it is self-insured through a policy acceptable to the CDCR, for all of its employees who will be engaged in the performance of this Agreement. Such coverage will be a condition of CDCR's obligation to pay for services provided under this Agreement.

Prior to approval of this Agreement and before performing any work, CONTRACTOR shall furnish to the State evidence of valid workers’ compensation coverage. CONTRACTOR agrees that the workers’ compensation insurance shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires or is canceled at any time during the term of this Agreement.

CONTRACTOR agrees to give at least 30 days prior notice to CDCR before said expiration date, or immediate notice of cancellation. Evidence of coverage shall not be for less than the remainder of the term of the Agreement or for a period of not less than one (1) year. The State reserves the right to verify the CONTRACTOR’s evidence of coverage. In the event the CONTRACTOR fails to keep workers’ compensation insurance coverage in effect at all times, the State reserves the right to terminate this Agreement and seek any other remedies afforded by the laws of this State.

CONTRACTOR also agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all of CONTRACTOR's workers' compensation claims and losses by CONTRACTOR's officers, agents, and employees related to the performance of this Agreement. CDCR Offenders are not the CONTRACTOR’s officers, agents, or employees.

Section 5.05 CDCR Non-Liability for Injuries Caused by Offenders.

Neither the State nor any State employee will be liable to the CONTRACTOR or its staff for injuries inflicted by Offenders or parolees of the State. The State agrees to disclose to the CONTRACTOR any statement(s), known to State staff, made by any Offender or parolee, which indicate(s) violence that may result in any specific situation. The same responsibility will be shared by the CONTRACTOR in disclosing such statement(s) to the State.

Article VI

COMPENSATION AND ADJUSTMENTS

Section 6.01 Compensable Offenders.

The terms of this Agreement apply only to CDCR Offenders. Nothing in this Agreement shall be construed to impose upon the CDCR any financial or other obligations for any non-CDCR Offender housed in the Facility. The CONTRACTOR’s costs of operations including start-up expenses, legal services, and the risks of physical damage to the Facility incurred as a direct
result of the placement of a CDCR Offender in the Facility shall be considered usual costs incidental to the operation of the Facility and part of the compensation set forth herein.

Section 6.02 Payment.

6.02.1 CDCR shall reimburse the CONTRACTOR a per Offender, per day (per diem) rate pursuant to Exhibits B1, B-2, B-3, and B-4.

6.02.2 CDCR shall reimburse the CONTRACTOR as set forth in Sections 3.03, 3.04, and 4.05.1 of this Agreement or such other sections that may set forth a CDCR cost reimbursement obligation.

6.02.3 Nothing herein shall prevent the CONTRACTOR from seeking a per diem increase during any contract renewal year. Such per diem increase shall be subject to legislative appropriation.

Section 6.03 Change in Governing Standards.

If, during the course of this Agreement, changes are made to any governing policies, procedures, protocols, or other governing standards referenced herein and CDCR requests that the CONTRACTOR make revisions to its operations to comply with said change, CONTRACTOR shall be given the opportunity to review the impact of the requested change, with respect to cost and operational practices, prior to implementing the change. Unless such compliance is required by statute or court order, CONTRACTOR shall not be required to make changes during the contract term that increase its costs or impact its operational practices unless the parties negotiate in good faith a modification to this Agreement for CDCR to provide adequate reimbursement or other compensation to the increased cost and/or to define the agreed implementation plan with corresponding timeline for those changes impacting operational practices. Provided further, the parties recognize that they have entered into this Agreement based upon currently existing operating requirements. Should a change in any of these requirements occur which necessitates a change in the scope of services and/or necessitates additional services so as to increase or decrease the cost of operating or performing other services as contemplated by this Agreement, either party may present documentation to support an increase or decrease to the per diem rate. Thereafter, the parties will use their best efforts to arrive at a mutually accepted increase or decrease in the per diem rate. Specifically it is understood that CDCR may require additional medical and healthcare staffing above that as shown in the staffing information provided by CONTRACTOR. In said event CDCR agrees to bear the actual cost incurred by CONTRACTOR in providing those additional medical and healthcare services.

Section 6.04 Billings.

CONTRACTOR will submit detailed invoices for payment of the compensation payable by CDCR to CONTRACTOR pursuant to the terms of Exhibit A, Scope of Work, Section 6.02, Payment, with supporting documentation to CDCR, in arrears on a monthly basis within five (5) business days of month end, though the failure to do so shall not negate the obligation of CDCR to pay such invoice. CDCR will make payment within 45 days of receipt of the invoice.

Section 6.05 Taxes/Utilities.

CONTRACTOR shall pay all local, state, federal taxes, and all utilities charged, incurred, or imposed with respect to the Facility.
Article VII

LEGAL PROCEEDINGS, INDEMNIFICATION & INSURANCE

Section 7.01 Indemnification.

The CONTRACTOR hereby assumes entire responsibility and liability for any and all damages or injury of any kind or nature, including death resulting there from, to all persons, whether employees of the CONTRACTOR or otherwise, and to all property caused by, resulting from, arising out of, or occurring in connection with any action of the CONTRACTOR, including its officers, directors, employees, subcontractors, or agents, in performance of the duties of this Agreement. If any claims for such damage or injury, including death resulting there from, be made or asserted, whether or not such claims are based upon the CONTRACTOR's, including its officers, directors, employees, subcontractors, or agents, active or passive negligence or participation in the wrong or upon any alleged breach of any statutory duty or obligation on the part of the above parties, the CONTRACTOR agrees to indemnify, defend, and hold harmless, the State and CDCR, their officers, agents, servants, and employees, and the Receiver appointed in the Federal Court case of *Plata v. Brown*, from and against any and all such claims, and further from and against any and all loss, cost, expense, liability, damage, or injury, including legal fees and disbursements, that the State and CDCR, their officers, agents, servants, or employees may directly or indirectly sustain, suffer, or incur as a result, and the CONTRACTOR agrees to and does hereby assume, on behalf of the State and CDCR, their officers, agents, servants, or employees may directly or indirectly sustain, suffer, or incur as a result, and the CONTRACTOR agrees to and does hereby assume, on behalf of the State and CDCR, their officers, agents, servants, and employees, the defense of any action at law or in equity which may be brought against the State, CDCR, or their contractors (if any), their officers, agents, servants, or employees, arising by reason of such claims and to pay on behalf of the State and CDCR, their officers, agents, servants and employees, upon demand of either of them, the amount of any judgment that may be entered against them, individually, jointly or severally, their officers, agents, servants, or employees in any such action. Notwithstanding any provision herein to the contrary, the CONTRACTOR's responsibility and liability under this Section 7.01 does not include any responsibility or liability for CDCR Offender workers compensation claims. As part of the CONTRACTOR's assumption of all responsibility and liability for any and all damage or injury as detailed above, the CONTRACTOR further agrees to hold harmless, defend, and indemnify the State and CDCR for any loss, expense, recovery, or settlement, including counsel fees and costs of defense, which arise from any demand, claim, whether frivolous or not, or suit which may be asserted or brought against the State, CDCR, or the CONTRACTOR as a result of any injury or damage to any person or persons, including death, or property (i) allegedly caused by, resulting from, arising out of, or occurring in connection with the furnishing of any goods, equipment, or services or the performance or preparation for performance of any of the work or any duties of the CONTRACTOR hereunder, or incidental or pertaining thereto, and (ii) whether or not such injury or damage is due to or chargeable to the site owner or any CONTRACTOR or subcontractor under a contract for which the goods or services herein ordered are required, including, but not limited to, any claim based on liability without fault for injury caused by defective goods supplied by the CONTRACTOR.

The CONTRACTOR also agrees to assume responsibility for, hold harmless, defend, and indemnify the State and CDCR for payment of any expenses, costs (including delay costs), direct and consequential damages, penalties, taxes, or assessments (including punitive damages), including counsel fees and costs of defense, which may be imposed or incurred (a) under any federal, state, or local law, ordinance or regulation upon or with respect to any compensation of any person employed by the CONTRACTOR, and (b) under any federal, state, or local law, ordinance or regulation upon or with respect to discrimination in employment against any individual employed by the CONTRACTOR on the basis of race, color, religion, sex,
or national origin, and (c) under any federal, state, or local law, ordinance or regulation upon or with respect to any compensation of any person for claims or civil actions alleging deprivation of right, privilege, or immunity secured by the United States Constitution and laws pursuant to 42 USC Section 1983 or similar statutes as well as claims for attorney’s fees brought pursuant to 42 USC Section 1988 or similar statutes.

Section 7.02 Legal Proceedings.

The CONTRACTOR shall not be responsible for defending any post-conviction action, including appeals and writs of habeas corpus, by any Offender challenging the underlying judgment of conviction or the administration of the sentence imposed.

Section 7.03 Insurance.

The CONTRACTOR is responsible for obtaining and maintaining adequate insurance coverage as required herein. The CONTRACTOR shall obtain and provide proof of general liability insurance coverage (broad form coverage), which shall specifically include fire and legal liability, in an amount not less than $2,000,000.00 for each occurrence within a yearly aggregate of at least $10,000,000.00, and civil rights claims in an amount not less than $2,000,000.00 for each occurrence within a yearly aggregate of at least $5,000,000.00. The State of California and its respective agencies shall be included as additional insured’s under the policy of general liability insurance coverage issued to the CONTRACTOR. Coverage for civil rights liability may be issued under a separate policy, but shall also include the State and its agencies as additional insured’s. Vehicle liability coverage for all vehicles used by the CONTRACTOR shall be provided in an amount of not less than $2,000,000.00 per occurrence. Coverage shall also specifically be provided to protect against employee dishonesty in an amount of not less than $50,000.00.

The CONTRACTOR shall obtain and provide proof of workers’ compensation insurance coverage, including employer liability, in the amount and manner required by law for all employees of the CONTRACTOR.

The CONTRACTOR shall obtain and/or provide proof of professional liability insurance coverage, including medical malpractice liability and errors and omissions coverage, to cover all professional services to be provided by the CONTRACTOR to the State under this Contract. The amount of coverage obtained shall be $2,000,000.00 per occurrence with a $5,000,000.00 yearly aggregate. If occurrence coverage is not available, claims-made coverage with a three (3) year tail coverage shall be provided for the same amounts and aggregate as detailed above.

The CONTRACTOR shall obtain and provide proof of contractual liability insurance coverage to cover all liability assumed by the CONTRACTOR under this Contract and for which the CONTRACTOR may be liable to the State or CDCR under the indemnification provisions of this Contract (intermediate form coverage). Such coverage may be provided by separate coverage or as an additional endorsement to a general liability policy, but shall be in the same amounts and limits of coverage as that required for general liability coverage.

All insurance coverage shall be obtained by the CONTRACTOR through an insurance agent licensed in the state where the Facility is located and such coverage shall be provided by an insurance company licensed to issue such coverage in such state. No “self-insurance” coverage shall be acceptable unless the CONTRACTOR is licensed or authorized to self-insure for a particular coverage in the state where the Facility is located, or is an insured member of a self-
insurance group that is licensed to self-insure in such state. All policies shall include a provision requiring at least 30 days’ prior written notice of cancellation to the State and CDCR.

All insurance coverage required to be obtained by the CONTRACTOR shall continue in full force and effect during the term of the Contract and any extension thereof. Proof of insurance policies must be delivered prior to the date on which the services of the CONTRACTOR shall commence.

All insurance coverage is to be provided by insurance carriers admitted to do business in the state where the Facility is located and coverage issued by surplus lines companies shall not be acceptable with the exception of civil rights liability coverage. All insurance carriers shall be, at the minimum, rated "A VII" by A.M. Best or an equivalent rating by a similar insurance rating service.

The CONTRACTOR may choose the amount of deductible for any of the insurance coverage required (above) to be obtained by the CONTRACTOR, but in no event shall such deductible for each occurrence exceed five (5) percent of the required yearly aggregate limit of coverage.

The CONTRACTOR is responsible for first dollar defense coverage. All general liability and professional liability policies shall provide defense in addition to the policy limits.

The limits required herein are the minimum acceptable. However, these limits are not to be construed as being the maximum, the CONTRACTOR may wish to purchase additional coverage for its own benefit.

With respect to the total limits of liability required, any combination of primary and/or umbrella coverage may satisfy those totals. However, if an umbrella is used, coverage must be at least as broad as the primary coverage.

Section 7.04 Certificate of Insurance and Cancellation.

During the performance of the management services hereunder, the CONTRACTOR shall maintain the plan of insurance and submit a Certificate of Insurance to CDCR for the mutual protection and benefit of it and CDCR, naming CDCR as co-insured and entitled to all notices issued under the policy, to cover claims that may arise out of or result from the CONTRACTOR’s operation and management services hereunder, whether same be by the CONTRACTOR or a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. CDCR shall be notified at least 30 days in advance of cancellation, non-renewal or adverse change in the coverage. New Certificates of Insurance are to be provided to CDCR within 15 days of receipt by CONTRACTOR.

Section 7.05 Defense/Immunity.

By entering into the Contract, neither the State, CDCR, nor the CONTRACTOR waives any immunity defense which may be extended to them by operation of law including limitation of damages, excepting only that the CONTRACTOR may not assert the defense of sovereign immunity.

Section 7.06 Notice of Claims.

Within 10 business days after receipt by CDCR, or of any agent, employee or officer of CDCR, of a summons in any action, or within 10 business days of receipt by CDCR, or of any agent,
employee or officer thereof, of notice of claim, CDCR, or any agent, employee, or officer, shall notify the CONTRACTOR in writing of the commencement thereof. The notice requirement is intended to ensure that the CONTRACTOR’s defense of the claim is not harmed by failure to comply with the notice requirements. Failure to comply with the notice requirements may result in the CONTRACTOR’s refusal to indemnify CDCR or any agent, employee, or officer, but only if such failure to notify results in a prejudice to the CONTRACTOR, CDCR, or any agent, employee, or officer. The CONTRACTOR will provide CDCR similar notice of claims.

Section 7.07 Prior Occurrences.

The CONTRACTOR shall not be responsible for any losses or costs resulting from Offender litigation pending at the effective date of this Agreement or for lawsuits based on acts or omissions occurring prior to the effective date of the Agreement.

Section 7.08 Waiver.

No waiver of any breach of any of the terms or conditions of the Agreement shall be held to be a waiver of any other or subsequent breach; nor shall any waiver be valid or binding unless the same shall be in writing and signed by the party alleged to have granted the waiver.

Section 7.09 Risk of Physical Damage to Facility.

The risks and costs of physical damage to the Facility shall be considered usual costs incidental to the operation of the Facility and part of the costs reimbursed by the fixed rate per Offender day as provided in Exhibit A, Article VI, Operation of Facility. This does not preclude CONTRACTOR from taking action against an Offender who causes such damages.

Article VIII.

DEFAULT AND TERMINATION

Section 8.01 CDCR Default.

Each of the following shall constitute an Event of Default on the part of the CDCR:

8.01.1 Failure to pay any payment required to be paid pursuant to this Agreement within 45 days after payment is due, provided such failure to pay shall not constitute an Event of Default if CDCR has withheld any payment to CONTRACTOR pursuant to statutory authority.

8.01.2 Failure by CDCR to keep, observe, perform, meet, or comply with any covenant, agreement, term, or provision of this Agreement required to be kept, observed, met, performed, or complied with by CDCR hereunder, which such failure continues for a period of 30 days after CDCR has received a written notice of deficiency from the CONTRACTOR.

Section 8.02 CONTRACTOR Default.

Each of the following shall constitute an Event of Default on the part of the CONTRACTOR:

8.02.1 The failure to keep, observe, perform, meet, or comply with any covenant, agreement, term, or provision of this Agreement to be kept, observed, met, performed, or complied
with by CONTRACTOR hereunder, which such failure continues for a period of 30 days after CONTRACTOR has received a written notice of deficiency from the Contract Monitor.

8.02.2 The failure of CONTRACTOR to meet or comply with any applicable federal or state requirement or law, which such failure continues for a period of 30 days after CONTRACTOR has received a written notice of deficiency from the Contract Monitor.

8.02.3 The failure of CONTRACTOR to comply with any applicable CDCR policy for which CONTRACTOR has not received a prior written waiver from CDCR, when such failure continues for a period of 30 days after CONTRACTOR has received a written notice of deficiency from the Contract Monitor. Provided, however, the Contract Monitor shall not unilaterally provide written notices of deficiency regarding any areas where there is a conflict between Governing Standards, pursuant to Exhibit A, Scope of Work, Section 9.24, Governing Standards, and until the CONTRACTOR and CDCR have had an opportunity to mutually agree upon the appropriate Governing Standard pursuant to Exhibit A, Scope of Work, Section 9.24, Governing Standards.

8.02.4 If CONTRACTOR (a) admits in writing its inability to pay its debts; (b) makes a general assignment for the benefit of creditors; (c) suffers a decree or order appointing a receiver or trustee for it or substantially all of its property to be entered and, if entered without its consent, not to be stayed or discharged within 60 days; (d) suffers a proceedings under any law relating to bankruptcy, insolvency, or the reorganization or relief of debtors to be instituted by or against it and if contested by it, not to be dismissed or stayed within 60 days; or (e) suffers any judgment, writ of attachment or execution, or any similar process to be issued or levied against a substantial part of its property.

8.02.5 The discovery by CDCR that any statement, representation, or warranty in this Agreement on the part of CONTRACTOR is false, misleading, or erroneous in any material respect.

Section 8.03 Notice of Breach.

No breach of this Agreement by either party shall constitute an Event of Default and no action with regard to same may be instituted unless and until the party asserting a breach specifies that a deficiency or deficiencies exist(s) that, unless corrected or timely cured, will constitute a material breach of this Agreement on the part of the party against which a breach is asserted. Nothing in this section is intended to prevent any party from terminating this Agreement pursuant to Exhibit A, Scope of Work, Section 2.02, Termination for Non- Appropriation of this Agreement.

Section 8.04 Time to Cure.

If any material breach of this Agreement by either party remains uncured more than 30 days after written notice thereof by the party asserting this breach, this shall be an Event of Breach, provided, however, if within 30 days after such notice, a substantial good faith effort to cure breach shall not be an Event of Default if it is cured within a reasonable time thereafter.

Section 8.05 Remedy for Default.

Upon the occurrence of an Event of Default, either party shall have the right to pursue any remedy it may have at law or equity, including but not limited to: reducing its claim to judgment,
including seeking an award of attorney’s fees and costs, taking action to cure the Event of
Default, and termination of the Contract.

Section 8.06 Waiver.

No waiver of any breach of any terms or conditions of this Agreement shall be held to be a
waiver of any other or subsequent breach; nor shall any waiver be valid or binding unless the
same shall be in writing and signed by the party alleged to have granted the waiver.

Section 8.07 Termination for Immediate Threat.

The requirement of written notice and opportunity to cure as provided in Exhibit A, Scope of
Work, Sections 8.02, 8.03, and 8.04 will not apply if the CDCR, in its sole discretion, determines
that a CONTRACTOR default has occurred, which creates an immediate threat of imminent
harm to the safety, health, or welfare of the public, employees, or Offenders. In such event the
parties shall mutually cooperate for an immediate return of CDCR Offenders consistent with the
availability of transportation and housing.

Section 8.08 Force Majeure.

Neither party shall be liable for failure to perform under this Contract if such failure to perform
arises out of causes beyond the control and without the fault or negligence of the nonperforming
party. Such causes may include, but are not limited to, acts of God or the public enemy, fires,
floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather.
This provision shall become effective only if the party failing to perform immediately notifies the
other party of the extent and nature of the event resulting in the delay, limits delay in
performance to that required by the event and takes all reasonable steps to minimize delays.

Article IX

MISCELLANEOUS

Section 9.01 Integration.

This Agreement is intended as the complete integration of all understandings between the
parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have
any force or affect whatsoever, unless embodied herein by writing. No subsequent innovation,
renewal, addition, or other amendment hereto shall have any force unless embodied in a written
agreement executed and approved pursuant to State of California laws, rules and policies.

Section 9.02 Disputes Contract or Billing Disputes.

As a condition precedent to CONTRACTOR’s right to institute and pursue litigation or other
legally available dispute resolution process, if any, CONTRACTOR agrees that all disputes
and/or claims of CONTRACTOR arising under or related to the Agreement shall be resolved
pursuant to the following processes. CONTRACTOR’s failure to comply with said dispute
resolution procedures shall constitute a failure to exhaust administrative remedies.

Pending the final resolution of any such disputes and/or claims, CONTRACTOR agrees to
diligently proceed with the performance of the Agreement, including the delivering of goods or
providing of services. CONTRACTOR’s failure to diligently proceed shall constitute a material breach of the Agreement.

The Agreement shall be interpreted, administered, and enforced according to the laws of the State of California. The parties agree that any suit brought hereunder shall have venue in Sacramento, California, the parties hereby waiving any claim or defense that such venue is not convenient or proper.

a. Final Payment

Unless provided otherwise at the time of payment, the acceptance by CONTRACTOR of final payment shall release the CDCR from all claims, demands, and liability to CONTRACTOR for everything done or furnished in connection with this work and from every act and neglect of CDCR and others relating to or arising out of this work except for any claim previously accepted and/or in process of resolution.

b. Informal Appeal

CONTRACTOR and the program or institution contract liaison, or other designated CDCR employee of the unit for which the goods are being delivered or the service is being performed, shall first attempt, in good faith, to resolve the dispute or claim by informal discussion(s). CONTRACTOR shall identify the issues and the relief sought.

The program or institution contract liaison shall issue an informal written statement to CONTRACTOR regarding the dispute within 15 calendar days following settlement or an impasse in the informal discussion(s) process. The written statement shall either: (1) document the dispute settlement and what, if any, conditions were reached; or, (2) document the reason(s) the dispute could not be resolved informally and provide notification to CONTRACTOR of its option to file a formal appeal within 30 days of the informal statement. One (1) copy of the informal statement and the discussion(s) on which it is based shall be forwarded immediately to the Office of Business Services (OBS) for inclusion in the Agreement file.

c. Formal Appeal

If the dispute or claim is not resolved to CONTRACTOR’s satisfaction by the informal appeal process, CONTRACTOR may file with the Associate Director, Procurement and Contracts Branch (PCB), OBS, a formal written appeal within 30 calendar days of the date of CDCR’s informal written decision. The formal written appeal shall be addressed as follows:

Associate Director
Procurement and Contracts Branch
Office of Business Services
California Department of Corrections and Rehabilitation
P.O. Box 942883
Sacramento, California 94283-0001

CONTRACTOR shall specify in the formal written appeal the issue(s) in dispute, the particular relief or remedy sought, the factual basis for CONTRACTOR’s claim or dispute, and CONTRACTOR’s legal, technical, and/or other authority upon which CONTRACTOR bases its claim or dispute.

The formal written appeal shall include a written certification signed by a knowledgeable company official under the penalty of perjury according to the laws of the State of
California pursuant to California Code of Civil Procedure, Section 2015.5, that the dispute, claim, or demand is made in good faith, and that the supporting data are accurate and complete. If an Agreement adjustment is requested, the written certification shall further state under penalty of perjury that the relief requested accurately reflects the Agreement adjustment for which the CDCR is responsible.

If CONTRACTOR is a corporation, the written certification shall be signed by an officer thereof. If CONTRACTOR is a sole proprietorship or partnership, it shall be signed by an owner or full partner. If CONTRACTOR is other than a corporation, sole proprietorship or partnership, it shall be signed by a principal of the company with authority to bind the company.

The Associate Director, PCB, OBS, shall issue a formal written decision on behalf of CDCR within 30 calendar days of receipt of the properly addressed formal written appeal. If mutually agreed by the parties, the date for the issuance of CDCR’s final written decision may be extended.

d. Further Resolution
If the dispute is not resolved by the formal appeal process to CONTRACTOR’s satisfaction, or CONTRACTOR has not received a written decision from the Associate Director, PCB, OBS, after 30 calendar days, or other mutually agreed extension, CONTRACTOR may thereafter pursue its right to institute other dispute resolution process(es) if any, available under the laws of the State of California.

Section 9.03 Computer Software Management Memo.

CONTRACTOR certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

Section 9.04 Accounting Principles – No Dual Compensation.

The CONTRACTOR will adhere to generally accepted accounting principles as outlined by the American Institute of Certified Public Accountants. Dual compensation is not allowed; a CONTRACTOR cannot receive simultaneous compensation from two (2) or more funding sources for the same services performed even though both funding sources could benefit.

Section 9.05 Subcontractor/Consultant Information.

CONTRACTOR is required to identify all subcontractors and consultants who will perform labor or render services in the performance of this Agreement. Additionally, the CONTRACTOR shall notify the CDCR, OBS, in writing, within 10 working days, of any changes to the subcontractor and/or consultant information.

Section 9.06 Employment of Ex-Offenders.

CONTRACTOR cannot, and shall not, either directly, or on a subcontract basis, employ in connection with this Agreement:

   a) Ex-Offenders on active parole or probation;
b) Ex-Offenders at any time if they are required to register as a sex offender pursuant to Penal Code, Section 290, or if such ex-Offender has an offense history involving a “violent felony” as defined in subparagraph (c) of Penal Code, Section 667.5; or

c) Any ex-felon in a position which provides direct supervision of parolees.

Ex-Offenders who can provide written evidence of having satisfactorily completed parole or probation may be considered for employment by the CONTRACTOR subject to the following limitations:

a) CONTRACTOR shall obtain the prior written approval to employ any such ex-Offender from the Out-of-State Administration Unit; and

b) Any ex-Offender whose assigned duties are to involve administrative or policy decision-making; accounting, procurement, cashiering, auditing, or any other business-related administrative function shall be fully bonded to cover any potential loss to the State of California.

Section 9.07 Electronic Waste Recycling.

The CONTRACTOR certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. CONTRACTOR shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

Section 9.08 Excise Tax.

The State of California is exempt from federal excise taxes; no payment will be made for any taxes levied on employees’ wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

Section 9.09 Licenses and Permits.

The CONTRACTOR shall be an individual or firm licensed to do business in the state in which the Facilities are located and shall obtain at CONTRACTOR’s expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this Agreement. In the event any license(s) and/or permit(s) expire at any time during the term of this Agreement, CONTRACTOR agrees to provide the CDCR with a copy of the renewed license(s) and/or permit(s) within 30 days following the expiration date. In the event the CONTRACTOR fails to keep in effect at all times all required license(s) and permit(s), the State may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

Section 9.10 Conflict of Interest.

The CONTRACTOR and their employees shall abide by the provisions of: Government Code (GC) Sections 1090, 81000 et seq., 82000 et seq., 87100 et seq., and 87300 et seq.; Public Contract Code (PCC) Sections 10335 et seq. and 10410 et seq.; California Code of Regulations (CCR), Title 2, Section 18700 et seq.; CCR Title 15, Section 3409, and; the Department Operations Manual (DOM) Section 31100 et seq. regarding conflicts of interest.
Former State Employees

1) For the two (2) year period from the date he or she left state employment, no former state officer or employee may enter into an agreement in which he or she is engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision making process relevant to the agreement while employed in any capacity by any state agency.

2) For the 12-month period from the date he or she left state employment, no former state officer or employee may enter into an agreement with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed agreement within the 12 month period prior to his or her leaving state service.

In addition to the above, the CONTRACTOR shall avoid any conflict of interest whatsoever with respect to any financial dealings, employment services, or opportunities offered to Offenders or parolees. The CONTRACTOR shall not itself employ or offer to employ Offenders or parolees either directly or indirectly through an affiliated company, person, or business unless specifically authorized in writing by the CDCR. In addition, the CONTRACTOR shall not, either directly or indirectly, through an affiliated company, person, or business, engage in financial dealings with Offenders or parolees, except to the extent that such financial dealings create no actual or potential conflict of interest, are available on the same terms to the general public, and have been approved in advance in writing by the CDCR. For the purposes of this paragraph, “affiliated company, person, or business” means any company, business, corporation, nonprofit corporation, partnership, limited partnership, sole proprietorship, or other person or business entity of any kind which has any ownership or control interest whatsoever in the CONTRACTOR, or which is wholly or partially owned (more than 5% ownership) or controlled (any percentage) by the CONTRACTOR or by the CONTRACTOR’s owners, officers, principals, directors, and/or shareholders, either directly or indirectly. “Affiliated companies, persons, or businesses” include, but are not limited to, subsidiary, parent, or sister companies or corporations, and any company, corporation, nonprofit corporation, partnership, limited partnership, sole proprietorship, or other person or business entity of any kind that is wholly or partially owned or controlled, either directly or indirectly, by the CONTRACTOR or by the CONTRACTOR’s owners, officers, principals, directors, and/or shareholders.

The CONTRACTOR shall have a continuing duty to disclose to the State, in writing, all interests and activities that create an actual or potential conflict of interest in performance of the Agreement.

The CONTRACTOR shall have a continuing duty to keep the State timely and fully apprised, in writing, of any material changes in the CONTRACTOR’s business structure and/or status. This includes any changes in business form, such as a change from sole proprietorship or partnership into a corporation or vice-versa; any changes in company ownership; any dissolution of the business; any change of the name of the business; any filing in bankruptcy; any revocation of corporate status by the Secretary of State; and any other material changes in the CONTRACTOR’s business status or structure that could affect the performance of the CONTRACTOR’s duties under the Agreement.

If the CONTRACTOR violates any provision of the above paragraphs, such action by the CONTRACTOR shall render this Agreement void at the option of CDCR.
Section 9.11 CONTRACTOR Employee Misconduct.

During the performance of this Agreement, it shall be the responsibility of the CONTRACTOR, whenever there is an allegation of employee misconduct associated with and directly impacting Offender and/or parolee rights, to immediately notify the CDCR of the incident(s), to cause an investigation to be conducted, and to provide CDCR with all relevant information pertaining to the incident(s). All relevant information includes, but is not limited to: a) investigative reports; b) access to Offenders/parolees and the associated staff; c) access to employee personnel records; d) that information reasonably necessary to assure CDCR that Offenders and/or parolees are not or have not been deprived of any legal rights as required by law, regulation, policy, and procedures; and e) written evidence that the CONTRACTOR has taken such remedial action, in the event of employee misconduct with Offenders and/or parolees, as will assure against a repetition of the incident(s). Notwithstanding the foregoing, and without waiving any obligation of the CONTRACTOR, CDCR retains the power to conduct an independent investigation of any incident(s). Furthermore, it is the responsibility of the CONTRACTOR to include the foregoing terms within any and all subcontracts, requiring that subcontractor(s) agree to the jurisdiction of CDCR to conduct an investigation of their Facility and staff, including review of subcontractor employee personnel records, as a condition of the Agreement. Nothing contained in this paragraph shall be deemed to constitute a waiver of any attorney/client privilege or of the work product doctrine privilege.

The CONTRACTOR shall report all suspected felonies to the appropriate law enforcement agency for investigation. In addition, the CONTRACTOR shall report any crime committed by an employee in the course and scope of that employee’s work, any crime committed on the grounds of the CONTRACTOR’s Facility, and any sex offense, drug offense, or violent offense by an employee wherever committed to an appropriate law enforcement agency, provided the CONTRACTOR has evidence-based, reasonable suspicion of the crime or offense.


CONTRACTOR agrees to comply with all Equal Employment Opportunity laws applicable to the operation of the Facility in their respective State.

Section 9.13 Invalidity and Severability.

To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. In the event that any provision of this Agreement is held invalid, that provision shall be null and void. However, the validity of the remaining provisions of the Agreement shall not be affected thereby. In the event that this entire Agreement is held invalid or unenforceable, all obligations of the parties hereunder shall cease as of that date, except with respect to claims for services rendered.

Section 9.14 Jurisdiction and Venue.

The laws of the State of California and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this Agreement. Venue(s) for any legal action related to performance or interpretation of this Agreement shall be in the City of Sacramento, California.
Section 9.15 Subcontracting and Assignment.

Nothing contained in this Agreement, or otherwise, shall create any contractual relation between the CDCR and any subcontractors, and no subcontract shall relieve the CONTRACTOR of CONTRACTOR's responsibilities and obligations hereunder. The CONTRACTOR agrees to be as fully responsible to CDCR for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONTRACTOR. The CONTRACTOR's obligation to pay its subcontractors is an independent obligation from the CDCR's obligation to make payments to the CONTRACTOR. As a result, the CDCR shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

Section 9.16 Notices.

Any notice provided for in this Agreement shall be in writing and served by personal delivery, designated CDCR electronic mail system, or United States Mail, postage prepaid, at the addresses listed in Exhibit A, Scope of Work, Section 11, Contact Information, until such time as written notice of change of address is received from either party. Any notice so mailed, and any notice served by electronic mail or personal delivery, shall be deemed delivered and effective upon receipt or upon attempted delivery. This method of notification will be used in all instances, except for emergency situations when immediate notification is required pursuant to the appropriate sections of this Agreement. CDCR and CONTRACTOR will be provided information on where to send notices prior to occupancy of Facilities.

Section 9.17 Confidentiality of Records.

CDCR and CONTRACTOR agree that all Offender records and Offender/patient record information is identified as confidential, shall be held in trust and confidence, and shall be used only for the purposes contemplated under this Agreement. CONTRACTOR, by acceptance of this Agreement, is subject to all of the requirements of the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (Code of Federal Regulations 9cfr), Title 45, Sections 164.501 et seq.; the California Government Code Sections 1798, et seq.; regarding the collections, maintenance, and disclosure of personal and confidential information about individuals.

Section 9.18 Ownership of Material Information, Data, Computer Software Documentation, Studies and Evaluations.

Unless otherwise provided, and when appropriate, CONTRACTOR agrees that all material, information, data, documentation, studies, and evaluations produced in the performance of this Agreement is the property of CDCR and the CONTRACTOR.

Section 9.19 Reporting.

CONTRACTOR shall submit to the CDCR Contract Monitor, on a quarterly basis, a written program report specifying progress made for each activity identified in the CONTRACTOR's duties and obligations, regarding the performance of this Agreement. Such written analysis shall be in accordance with the procedures developed and prescribed by the CDCR. The preparation of reports in a timely manner shall be the responsibility of the CONTRACTOR and failure to comply may result in delay of payment of funds. Required reports shall be submitted to the CDCR not later than 30 days following the end of each calendar quarter, or at such time as otherwise specified.
9.19.1 Facility Data Compilation Report (FDCR) - Each Contracted facility shall complete and submit the FDCR template (Attachment 10) on a monthly basis; all FDCR reports are to be completed in their entirety. Reports are to be submitted on the 15th of the following month to the Chief of CBU or designee.

Section 9.20 Records.

Unless otherwise provided CONTRACTOR shall compile and maintain a complete file of each CDCR Offender, including all records, communications, and other written materials which pertain to the operation of Offender programs or the delivery of services to Offenders under this Agreement, including medical, counseling, classification, and disciplinary documents, in individual files. Further, the CONTRACTOR shall permit the CDCR, or its designated representative, to audit, inspect, and copy such files and records during the term of this Agreement to assure compliance with the terms hereof or to verify actual costs subject to reimbursement under this Agreement. Such files and records will be deemed to be the property of the CDCR and shall be available for inspection by the CDCR and shall be returned to the CDCR upon discharge of a CDCR Offender from Facility. The CONTRACTOR may keep copies of said documents as may be necessary to resolve any matters that may be pending. Upon resolution of the matter said copied records shall be destroyed by CDCR. No files or records in which a CDCR Offender is individually identifiable by name, shall be released to any third party without express, advance authorization of CDCR, except in medical emergencies.

9.20.1 The CONTRACTOR shall maintain a complete file of all records, documents, communications, and other materials which pertain to the operation of programs or the delivery of services under this Agreement. Such materials shall be sufficient to properly reflect all direct and indirect costs of labor, materials, equipment, supplies, services, and other costs of whatever nature for which an Agreement payment was made. These records shall be maintained according to generally accepted accounting principles and shall be easily separable from other Facility records. The CDCR’s access to records pursuant to this provision shall be limited to those documents necessary to monitor contract compliance or to verify specific costs for which the CONTRACTOR sought reimbursement under this Agreement.

9.20.2 All such records, documents, communications, and other materials shall be the property of CDCR and shall be maintained by the CONTRACTOR, in a central location with a designated custodian, on behalf of CDCR, for a period of three (3) years from the final payment of this Agreement, or until an audit has been completed with the following qualification: If an audit by or on behalf of the Federal Government had begun but is not completed at the end of the three (3) year period, the materials shall be retained until the resolution of the audit finding.

9.20.3 CONTRACTOR shall permit the CDCR to audit and/or inspect its records during the term of this Agreement and for a period of three (3) years following the termination of the Agreement to assure compliance with the terms hereof or to verify actual costs subject to reimbursement under this Agreement.

Section 9.21 No Third Party Benefit Except As Provided.

This Agreement shall benefit and burden the parties hereto in accordance with its Terms and Conditions and is not intended, and shall not be deemed or construed, to confer rights, powers, benefits, or privileges on any person or entity other than the parties to this Agreement and the Receiver as provided in Exhibit A, Scope of Work, Section 4.05.6. This Agreement is not
intended to create any rights, liberty interests, or entitlements in favor of any CDCR Offender. The Agreement is intended only to set forth the contractual rights and responsibilities of the Agreement parties. CDCR Offenders shall have only those entitlements created by federal or state constitutions, statutes, regulations, case law, or applicable court orders.

Section 9.22 Survival of Certain Terms.

Notwithstanding anything herein to the contrary, the parties understand and agree that all Terms and Conditions of this Agreement and any appendices or attachments hereto, which may require continued performance or compliance beyond the termination date of the Agreement, shall survive such termination date and shall be enforceable by the CDCR as provided herein in the event of such failure to perform or comply by CONTRACTOR.

Section 9.23 Amendment.

This Agreement shall not be altered, changed, or amended except by mutual consent of the parties in writing.

Section 9.24 Governing Standards.

In the event of a conflict between any of the governing standards, rules, regulations, policies, or procedures referenced herein, including, but not limited to ACA, NCCHC, CCR Title 15, CONTRACTOR policy and procedure, CDCR DOM, and CDCR rules, regulations, and policies, then the CONTRACTOR and CDCR shall mutually agree upon the standard, rule, regulation, policy, or procedure to be followed. If the CDCR Contract Monitor and Facility Warden are unable to reach an agreement within three (3) days, the conflict shall be resolved by the CONTRACTOR Chief Corrections Officer and Chief of CBU, or designee. The parties shall make a good faith effort to resolve the conflict and neither party shall unreasonably withhold their approval. In resolving the conflict, the parties shall take into account Facility issues such as: security and uniformity of polices as well as specific needs of CDCR Offender management. This provision shall not apply if compliance with a standard, rule, policy, or procedure is required by court order.

Section 9.25 ADA.

CONTRACTOR agrees that by signing this Agreement, it is assuring CDCR that it complies with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Section 12101 et seq., as applicable, which prohibits discrimination on the basis of disability, and with applicable regulations and guidelines pursuant to the A.D.A.

Section 9.27 RIGHT TO TERMINATE

The State reserves the right to terminate this Agreement subject to 30 calendar day’s written notice to the Contractor. Contractor may submit a written request to terminate this Agreement only if the State should substantially fail to perform its responsibilities as provided herein.
Article X

ATTACHMENTS

Attachment 1  Plata-Coleman Link
Attachment 2  Armstrong Link
Attachment 3  Daily Movement Sheet Template (CONTRACTOR to use existing CONTRACTOR version)
Attachment 4  Staff Deployment by Category
Attachment 5  Master Roster Template
Attachment 6  Daily Sign-in Sheets (CONTRACTOR to use existing shift roster)
Attachment 7  Distribution of Inmate Death Reporting and Review Policy, Effective September 5, 2008
Attachment 8  Offender Program Participation Table
Attachment 9  ACA Standards
Attachment 10  FDCR Template

Article XI

CONTACT INFORMATION

Section 11.01 CDCR CONTACT INFORMATION.
Should questions or problems arise during the term of the Agreement, the CONTRACTOR should contact the following offices:

Contract Monitor:
Brian Coates
10961 Sun Center Drive
Rancho Cordova, CA 95670
(916)464-4001

Contract Beds Unit:
10961 Sun Center Drive
Rancho Cordova, CA 95670
(916) 464-5130 - Main Fax
(916) 464-3766 - Records Fax
(916) 464-3768 - Field Operations Fax
(916) 464-3769 - Medical

Healthcare Contract Monitor:
John Dovey, Director
Field Operations, Corrections Services
California Correctional Health Care Services
8280 Longleaf Dr., D3
Elk Grove, CA 95758
(916) 691-4928
Deputy Director:
Donald Meier
Field Operations, Corrections Services
California Correctional Health Care Services
8280 Longleaf Dr., D3-723
Elk Grove, CA 95758
(916) 691-4828

Chief Medical Officer:
Ricki Barnett, MD
9260 Laguna Springs Dr., E2-308
Elk Grove, CA 95758
(916) 691-9574

Statewide Chief Nurse Executive:
Cheryl Schutt, RN
CCHCS
9260 Laguna Springs Dr., Bldg E
Elk Grove, CA 95758
(916) 691-9939

Mental Health Coordinator:
Dr. Robert Smith
Senior Psychologist
(916) 508-1727

Dental Liaison for COCF:
Thaddous Archie, DDS
9272 Laguna Springs Dr., G2-416
Elk Grove, CA 95758
(916) 691-0240

Escape/Incident Reporting (I.D./Warrants):
Phone 24 Hour Notification (916) 323-4087
FAX (916) 322-4038

Restitution/Victim Services Unit:
Department of Corrections & Rehabilitation
P.O. Box 1046
Folsom, CA 95763-1046

Office of Communications:
Deborah Hoffman
1515 S Street, Suite 502-S
Sacramento, CA 95814
Phone: (916) 445-4950
Fax: (916) 442-2637
Section 11.02 CONTRACTOR CONTACTS.
Should questions or problems arise during the term of the Agreement, CDCR should contact the following CONTRACTOR contacts:

Company Representative
Natasha Metcalf
Vice President, Partnership Development
10 Burton Hills Boulevard, Nashville, TN 37215

Tallahatchie County Correctional Facility
415 US Highway 49N
Tutwiler, MS 38963
(662) 345-6567
Warden Fred Figueroa

North Fork Correctional Facility
1605 East Main
Sayre, OK 73662
(580) 928-8200
Warden Anastacio Perez

La Palma Correctional Center
5501 North La Palma Road
Eloy, AZ 85231
(520) 464-3200
Warden James Macdonald

Florence Correctional Center
1100 Bowling Road
Florence, AZ 95232
(520) 868-5862
Warden Brian Koehn
1. Invoicing and Payment

   a. For services satisfactorily rendered, and upon receipt and approval of Contractor’s invoices, the State agrees to compensate the Contractor in accordance with the rates specified herein on Exhibit B-1 through B-5 Rate Sheet, and made a part of this Agreement. Exhibit B-1 Rate Sheet shall remain in force for the stated term of this Agreement and shall include every item of expense, direct and indirect, including taxes incidental to the specified rates.

   b. Invoices shall include the Agreement Number, Purchase Order Number and shall be submitted in triplicate not more frequently than monthly in arrears to the address provided below.

   c. The Contractor also has the option to submit their invoices electronically to the appropriate email address listed below. The Contractor must use the name on the Agreement and the Agreement Number on the subject line of the email. The email must include an attached PDF file of the invoice, in accordance with the information above, and must reference the institution acronym and invoice number. Separate emails shall be sent for contracts with more than one participating institution, facility, office and/or site with the invoice information as stated above.

   1) To submit invoices for all Headquarters contracts (DAPO, DAI, DRP, Legal, Office of Offender Services, etc):

       California Department of Corrections and Rehabilitation (CDCR)
       Sacramento Accounting Office
       Attention: Accounts Payable A
       P.O. Box 187015
       Sacramento, CA 95818-7015

       For electronic submission, send invoices to:
       APAContractInvoice@cdcr.ca.gov

2. Budget Contingency Clause

   a. It is mutually agreed that if the California State Budget Act for the current fiscal year and/or any subsequent fiscal years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor, or to furnish any other considerations under this Agreement, and Contractor shall not be obligated to perform any provisions of this Agreement.

   b. If funding for the purposes of this program is reduced or deleted for any fiscal year by the California State Budget Act, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to Contractor to reflect the reduced amount.
3. **Prompt Payment Clause**

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927. Payment to small/micro businesses shall be made in accordance with and within the time specified in Chapter 4.5, Government Code 927 et seq.

4. **Subcontractors**

Nothing contained in this Agreement, or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of Contractor’s responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor’s obligation to pay its subcontractors is an independent obligation from the State’s obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.
CDCR California Out of State Correctional Facilities

<table>
<thead>
<tr>
<th>Maximum Per Diem for FY 2015/16*</th>
<th>$76,493,890.20</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2016 to June 30, 2016</td>
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<tr>
<th>Maximum Per Diem for FY 2016/17*</th>
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**TOTAL for FY 15/16, 16/17, 17/18, 18/19** **$541,125,027.66**

*Maximum Per Diem is based on the agreed upon contract bed usage. CDCR payment will be based on actual occupancy.

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<tr>
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<tbody>
<tr>
<td>La Palma Correctional Center (LPCC)</td>
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**The Per Diem for TCCF will increase by $1.00 every January 1st starting January 1, 2017 thru January 1, 2019.**
CDCR California Out of State Correctional Facilities

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<tr>
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CDCR California Out of State Correctional Facilities

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The maximum amount of the contract for FY 16/17 is: $153,895,042.52.
**CDCR California Out of State Correctional Facilities**

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The maximum amount of the contract for FY 18/19 is: $155,859,049.12.
BUSINESS ASSOCIATES AGREEMENT (HIPAA)

Out of State Housing

WHEREAS, Provider, hereinafter referred to in this Exhibit as “Business Associate,” acknowledges that the CDCR, hereinafter referred to in this Exhibit as “Covered Entity,” has in its possession data that contains individual identifiable health information as defined by Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA") and the regulations promulgated thereunder;

WHEREAS, Business Associate and Covered Entity acknowledge that the fulfillment of the Parties' obligations under this Service Agreement necessitates the exchange of, or access to, data including individual identifiable health information; and,

WHEREAS, the parties desire to comply with federal and California laws regarding the use and disclosure of individually identifiable health information, and in particular with the provisions of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the regulations promulgated thereunder.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

Terms used, but not otherwise defined, in this Exhibit shall have the meanings set forth below.

1.1 "HHS Transaction Standard Regulation" means the Code of Federal Regulations ("CFR") at Title 45, Sections 160 and 162.

1.2 "Individual" means the subject of protected health information (PHI) or, if deceased, his or her personal representative.

1.3 "Parties" shall mean the Covered Entity and Business Associate. (Covered Entity and Business Associate, individually, may be referred to as a "Party".)

1.4 “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

1.5 “PHI” shall have the same meaning as the term “protected health information” in 45 CFR §164.501, limited to the information created or received by Business Associate from or on behalf of the Covered Entity.

1.6 “Required By Law” shall have the same meaning as “required by law” in 45 CFR §164.501.
1.7 “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.

Any other terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those terms in the Privacy Rule.

ARTICLE 2
CONFIDENTIALITY

2.1 Obligations and Activities of Business Associate. Business Associate agrees as follows:

(a) not to use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law;

(b) to establish, maintain, and use appropriate safeguards to prevent use or disclosure of the PHI other than as permitted herein;

(c) to report to Covered Entity any use, access or disclosure of the PHI not provided for by this Agreement, or any misuse of the PHI, including but not limited to systems compromises of which it becomes aware and to mitigate, to the extent practicable, any harmful effect that is known to Business Associate as a result thereof. Business Associate shall be responsible for any and all costs (including the costs of Covered Entity) associated with mitigating or remedying any violation of this Agreement;

(d) to enforce and maintain appropriate policies, procedures, and access control mechanisms to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. The access and privileges granted to any such agent shall be the minimum necessary to perform the assigned functions;

(e) to provide access, at the request of Covered Entity, and in the time and manner reasonable designated by Covered Entity, to PHI in a Designated Record Set (as defined in the Privacy Rule), to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524;

(f) to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner reasonably requested by Covered Entity.

(g) to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner reasonably requested by Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity’s compliance with the Privacy Rule.

(h) to document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR
§164.528. Said documentation shall include, but not be limited to, the date of the disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure. Said documentation shall be made available to Covered Entity upon request.

(i) to provide to Covered Entity or an Individual, in a time and manner reasonably requested by Covered Entity, information collected in accordance with Section 2.1(h) above to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

(j) to promptly notify Covered Entity of all actual or suspected instances of deliberate unauthorized attempts (both successful and unsuccessful) to access PHI. Such notice shall be made to Covered Entity by telephone as soon as Business Associate becomes aware of the unauthorized attempt, and this telephone notification shall be followed within two (2) calendar days of the discovery of the unauthorized attempt by a written report to Covered Entity from Business Associate. Business Associate shall, at the same time, report to Covered Entity any remedial action taken, or proposed to be taken, with respect to such unauthorized attempt. Covered Entity shall have the discretion to determine whether or not any such remedial action is sufficient, and all such remedial action shall be at Business Associate’s expense.

(k) to maintain and enforce policies, procedures and processes to protect physical access to hardware, software and/or media containing PHI (e.g., hardcopy, tapes, removable media, etc.) against unauthorized physical access during use, storage, transportation, disposition and/or destruction.

(l) to ensure that access controls in place to protect PHI and processing resources from unauthorized access are controlled by two-factor identification and authentication: a user ID and a Token, Password or Biometrics.

(m) to implement, use and monitor its compliance with appropriate technological, administrative and physical safeguards to prevent the use or disclosure of PHI other than as permitted by this Agreement. Business Associate shall provide Covered Entity with evidence of such safeguards upon Covered Entities request. Covered Entity has the right to determine, in its sole discretion, whether such safeguards are appropriate, and to require any additional safeguards it deems necessary.

(n) In the event that Business Associate is served with legal process (e.g. a subpoena) or request from a governmental agency (e.g. the Secretary) that potentially could require the disclosure of PHI, Business Associate shall provide prompt (i.e., within twenty-four (24) hours) written notice of such legal process (including a copy of the legal process served) to the designated person at the Covered Entity. In addition, Business Associate shall not disclose the PHI without the consent of Covered Entity unless pursuant to a valid and specific court order or to comply with a requirement for review of documents by a governmental regulatory agency under its statutory or regulatory authority to regulate the activities of either party.
(o) to submit to periodic audits by Covered Entity verifying Business Associate’s compliance with appropriate technological, administrative and physical safeguards to prevent the use or disclosure of PHI other than as permitted by this Agreement, as well as compliance with the terms and conditions pursuant to this Agreement and compliance with state and federal laws and regulations. Audit review may be undertaken directly by the Covered Entity or by third parties engaged by the Covered Entity. Business Associate shall cooperate fully with Covered Entity or any such third party in connection with such audits.

2.2 Disclosures Required By Law.

In the event that Business Associate is required by law to disclose PHI, Business Associate will immediately provide Covered Entity with written notice and provide Covered Entity an opportunity to oppose any request for such PHI or to take whatever action Covered Entity deems appropriate.

2.3 Specific Use and Disclosure Provisions.

(a) Except as otherwise limited in this Agreement, Business Associate may use PHI only to carry out the legal responsibilities of the Business Associate under this Service Agreement.

(b) Except as otherwise limited in this Agreement, Business Associate may only disclose PHI (i) as Required By Law, or (ii) in the fulfillment of its obligations under the Service Agreement and provided that Business Associate has first obtained (A) the consent of Covered Entity for such disclosure, (B) reasonable assurances from the person to whom the information is disclosed that the PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and (C) reasonable assurances from the person to whom the information is disclosed that such person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.4 Obligations of Covered Entity.

(a) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate’s use or disclosure of PHI.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate’s use or disclosures of PHI.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of PHI.

(d) For any PHI received by Covered Entity from Business Associate on behalf of a third party or another covered entity, Covered Entity agrees to be bound to the obligations and activities of Business Associate enumerated in Section 2.1 as if and to the same extent Covered Entity was the named Business Associate hereunder.
2.5 **Permissible Requests by Covered Entity.**

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

2.6 **Policy and Procedure Review.**

Upon request, Business Associate shall make available to Covered Entity any and all documentation relevant to the safeguarding of PHI including but not limited to current policies and procedures, operational manuals and/or instructions, and/or employment and/or third party agreements.
ARTICLE 3
SECURITY

3.1 Government Healthcare Program Representations.

Business Associate hereby represents and warrants to Covered Entity, its shareholders, members, directors, officers, agents, or employees have not been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deferred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of a patient, (b) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (d) the unlawful, manufacture, distribution, prescription, or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. Business Associate further agrees to notify Covered Entity immediately after Business Associate becomes aware that the foregoing representation and warranty may be inaccurate or may be incorrect.

3.2 Security Procedures.

Each Party shall employ security procedures that comply with HIPAA and all other applicable state and federal laws and regulations (collectively, the "Law") and that are commercially reasonable, to ensure that transactions, notices, and other information that are electronically created, communicated, processed, stored, retained or retrieved are authentic, accurate, reliable, complete and confidential. Moreover, each Party shall, and shall require any agent or subcontractor involved in the electronic exchange of data to:

(a) require its agents and subcontractors to provide security for all data that is electronically exchanged between Covered Entity and Business Associate;

(b) provide, utilize, and maintain equipment, software, services and testing necessary to assure the secure and reliable transmission and receipt of data containing PHI;

(c) maintain and enforce security management policies and procedures and utilize mechanisms and processes to prevent, detect, record, analyze, contain and resolve unauthorized access attempts to PHI or processing resources;

(d) maintain and enforce policies and guidelines for workstation use that delineate appropriate use of workstations to maximize the security of data containing PHI;
(e) maintain and enforce policies, procedures and a formal program for periodically reviewing its processing infrastructure for potential security vulnerabilities;

(f) implement and maintain, and require its agents and subcontractors to implement and maintain, appropriate and effective administrative, technical and physical safeguards to protect the security, integrity and confidentiality of data electronically exchanged between Business Associate and Covered Entity, including access to data as provided herein. Each Party and its agents and subcontractors shall keep all security measures current and shall document its security measures implemented in written policies, procedures or guidelines, which it will provide to the other Party upon the other Party’s request.
ARTICLE 4
EXCHANGE OF STANDARD TRANSMISSIONS

4.1 Obligations of the Parties. Each of the Parties agrees that for the PHI,

(a) it will not change any definition, data condition or use of a data element or segment as proscribed in the HHS Transaction Standard Regulation.

(b) it will not add any data elements or segments to the maximum denied data set as proscribed in the HHS Transaction Standard Regulation.

(c) it will not use any code or data elements that are either marked "not used" in the HHS Standard's implementation specifications or are not in the HHS Transaction Standard's implementation specifications.

(d) it will not change the meaning or intent of any of the HHS Transaction Standard's implementation specifications.

4.2 Incorporation of Modifications to HHS Transaction Standards.

Each of the Parties agrees and understands that from time-to-time, HHS may modify and set compliance dates for the HHS Transaction Standards. Each of the Parties agrees to incorporate by reference into this Agreement any such modifications or changes.

4.3 Code Set Retention.

If applicable, both parties understand and agree to keep open code sets being processed or used in this Agreement for at least the current billing period or any appeal period, which ever is longer.

4.4 Business Associate Obligations.

(a) Business Associate shall not submit duplicate transmissions unless so requested by Covered Entity.

(b) Business Associate shall only perform those transactions, which are authorized by Covered Entity. Furthermore, Business Associate assumes all liability for any damage, whether direct or indirect, to the electronic data or to Covered Entity's systems caused by Business Associate's unauthorized use of such transactions.

(c) Business Associate shall hold Covered Entity harmless from any claim, loss or damage of any kind, whether direct or indirect, whether to person or property, arising out of or related to (1) Business Associate's use or unauthorized disclosure of the electronic data; or (2) Business Associate's submission of data, including but not limited to the submission of incorrect, misleading, incomplete or fraudulent data.
(d) Business Associate agrees to maintain adequate back-up files to recreate transmissions in the event that such recreations become necessary. Back-up tapes shall be subject to this Agreement to the same extent as original data.

(e) Business Associate agrees to trace lost or indecipherable transmissions and make reasonable efforts to locate and translate the same. Business Associate shall bear all costs associated with the recreation of incomplete, lost or indecipherable transmissions if such loss is the result of an act or omission of Business Associate.

(f) Business Associate shall maintain, for seven (7) years, true copies of any source documents from which it produces electronic data.

(g) Except encounter data furnished by Business Associate to Covered Entity, Business Associate shall not (other than to correct errors) modify any data to which it is granted access under this Agreement or derive new data from such existing data. Any modification of data is to be recorded, and a record of such modification is to be retained by Business Associate for a period of seven (7) years.

(h) Business Associate shall not disclose security access codes to any third party in any manner without the express written consent of Covered Entity. Business Associate furthermore acknowledges that Covered Entity may change such codes at any time without notice. Business Associate shall assume responsibility for any damages arising from its disclosure of the security access codes or its failure to prevent any third party use of the system without the express written consent of Covered Entity.

(i) Business Associate shall maintain general liability coverage, including coverage for general commercial liability, for a limit of not less than one million dollars, as well as other coverage as Covered Entity may require to compensate any parties damaged by Business Associate's negligence. Business Associate shall provide evidence of such coverage in the form of a certificate of insurance and agrees to notify Covered Entity and/or HOI immediately of any reduction or cancellation of such coverage.

(j) Business Associate agrees to conduct testing with Covered Entity to ensure delivery of files that are HIPAA-AS Compliant and to accommodate Covered Entity's specific business requirements.

4.5 Confidential And Proprietary Information

(a) Proprietary Information

Business Associate acknowledges that it will have access to certain proprietary information used in Covered Entity's business. Covered Entity's proprietary information derives its commercial value from the fact that it is not available to competitors or any third parties, and the disclosure of this information would or could impair Covered Entity's competitive position or otherwise prejudice its ongoing business. Business Associate agrees to treat as confidential, and shall
not use for its own commercial purpose or any other purpose, Covered Entity's proprietary information. Business Associate shall safeguard Covered Entity's proprietary information against disclosure except as may be expressly permitted herein. Such proprietary information includes, but is not limited to, confidential information concerning the business operations or practices of Covered Entity, including specific technology processes or capabilities.
ARTICLE 5
MISCELLANEOUS

5.1 Indemnification.

Business Associate shall indemnify, defend, and save harmless the State, CDCR, and CDCR’s officers, employees and agents, against any and all losses, liabilities, settlements, claims, demands, damages, or deficiencies (including interest) and expenses of any kind (including, but not limited to, attorneys’ fees) arising out of or due to a breach of the terms of this Exhibit to the Service Agreement, and arising out of Business Associate’s acts or omissions in regard to the terms of this Exhibit to the Service Agreement. The foregoing indemnity is in addition to any other save harmless or indemnification set forth in this entire Agreement.

5.2 Term and Termination.

(a) Term. The Term of this Agreement shall be effective as of the first date of commencement of services under this entire agreement, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) Termination for Cause. Upon a material breach by Business Associate of its obligation hereunder, Covered Entity may (i) terminate this Agreement and the Service Agreement; (ii) permit Business Associate to cure the breach; (iii) report the violation to the Secretary; and/or (iv) require Business Associate to take such other action as Covered Entity may request, at Business Associate’s expense.

Covered Entity’s remedies under this paragraph shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other. If Covered Entity elects to terminate the Agreement pursuant to a breach of terms and conditions of this Exhibit, Covered Entity shall be relieved of any further obligations under the entire Agreement, and shall be immediately entitled to a refund of any amounts prepaid from the date of the termination through the end of the payment period, on a pro rata basis.

The foregoing termination language is in addition to any other termination language set forth in the entire agreement.
(c) **Effect of Termination.**

(i) Except as provided in paragraph 5.2(c)(ii), upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(ii) In the event that Business Associate determines that returning the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Covered Entity’s agreement that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

5.3 **Disputes.**

**HIPAA Appeal Procedures**

CDCR has established and shall maintain an appeal procedure in accordance with CDCR Department Operations Manual, Section 22040.16. Business Associate agrees that disputes arising under the terms of this Exhibit shall be resolved in accordance with the following:

1. **Verbal Appeal**
   Business Associate and CDCR’s Privacy Officer, shall first attempt to resolve the problem by informal discussion. Business Associate agrees that CDCR’s Division of Correctional Health Care Services shall be used as a resource in solving potential disputes.

2. **Informal Appeal**
   If the issue is not resolved at the verbal appeal level, Business Associate shall file, within thirty (30) working days, an informal written appeal specifying: the issue(s) of dispute, legal authority or other basis for Business Associate’s position, supporting evidence, and remedy sought, with the CDCR Chief, Licensing and Information Systems, and provide a photocopy to the CDCR Assistant Deputy Director, Office of Business Services. The CDCR Chief, Licensing and Information Systems, shall make a determination on the issue and respond in writing within thirty (30) working days of receipt of the informal appeal, indicating the decision reached.

3. **Formal Appeal**
   Should Business Associate disagree with the informal appeal decision, Business Associate shall submit, within ten (10) working days after Business Associate’s receipt of the decision of the informal appeal, to the CDCR Deputy Director, Division of Correctional Health Care Services, and a photo copy to the CDCR, Assistant Deputy Director, Office of Business Services, written notification indicating why the informal appeal decision is unacceptable, along with a copy of the original statement of dispute and a copy of CDCR’s response. The CDCR Deputy Director, Division of
Corrections Corporation of America, or his/her designee may meet with Business Associate to review the issues within twenty (20) working days of the receipt of Business Associate's notification and shall provide Business Associate with written notification of the decision within forty-five (45) working days from the receipt of the formal appeal.

The foregoing dispute process is solely for the purpose of disputes arising from the terms and conditions of this Exhibit. Disputes in relation to the scope of work and other terms and conditions shall be in accordance with any other dispute language set forth in the entire Agreement.

5.4 Injunctive Relief.

Notwithstanding any rights or remedies provided for in Section 5.3, Covered Entity retains all rights to seek injunctive relief to prevent the unauthorized use of disclosure of PHI by Business Associate or any agent, contractor or third party that received PHI from Business Associate.

5.5 Regulatory References.

A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

5.6 Amendment.

The Parties agree to take such action as is necessary to amend this Agreement from time to time to the extent necessary for Covered Entity to comply with the requirements of HIPAA and its regulations. All amendments to this Exhibit shall be in writing and signed by both parties through a formal amendment to the entire agreement.

5.7 Survival.

The respective rights and obligations of Business Associate and Covered Entity under Sections 4.5, 5.1 and 5.2(c) of this Agreement shall survive the termination of this Agreement.

5.8 Limitation of Damages.

Other than liabilities under Section 5.1, neither party shall be liable to the other for any special, incidental, exemplary, punitive or consequential damages arising from or as a result of any delay, omission, or error in the electronic transmission or receipt of any information pursuant to this Agreement, even if the other Party has been advised of the possibility of such damages.

5.9 Interpretation.

Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

5.10 Third Party Beneficiary
Unless otherwise set forth herein, nothing contained herein is intended, nor shall it be construed, to create rights running of the benefit of third parties.

5.11 Notices

Any HIPAA related notice required hereunder shall be deemed to be sufficient if mailed to the parties at the addresses below. In order to avoid unreasonable delay in the provision of the services to be rendered pursuant to this Agreement, Business Associate and Covered Entity shall each designate a specific “HIPAA” representative(s) for the purpose of communication between the parties. Such representative(s) may be changed upon written notice to the other party.
Business Associate:

Corrections Corporation of America
10 Burton Hills Boulevard, Nashville, TN, 37215

Telephone: 615-263-3290
Facsimile: 615-263-3100

Covered Entity:

California Department of Corrections and Rehabilitation
Privacy Officer
HIPAA Compliance Unit
Division of Correctional Health Care Services
P.O. Box 942883
Sacramento, CA 94283-0001

Telephone: (916) 327-1842
Facsimile: (916) 327-0545