

**MEMORANDUM
PROBATION DEPARTMENT
COUNTY OF PLACER**

TO: Honorable Board of Supervisors
FROM: Marshall Hopper, Chief Probation Officer
DATE: July 7, 2015
SUBJECT: Contract/California Department of Corrections and Rehabilitation (Division of Juvenile Justice)/90 Day Diagnostics and Emergency Housing

ACTION REQUESTED

Adopt a Resolution to Authorize the Chief Probation Officer to sign the contracts of \$80,280 for 90 day diagnostic evaluations for minors and \$20,829 for Emergency Housing, and any amendments up to 10 percent, consistent with the contract's subject matter and scope of work.

BACKGROUND

The State of California has authorized the establishment of the California Department of Corrections and Rehabilitation (CDCR) for the purpose of providing comprehensive diagnostic, therapeutic, and rehabilitative services to minors residing in California as specified in Welfare and Institutions Code. In order for any County to place resident minors in a CDCR facility for court ordered 90-day observations and evaluations, said County must first have an annual contract executed with the CDCR.

The Board of Supervisors must adopt a resolution as defined in Welfare and Institutions Codes 1752.1 and 1752.15, before the County may send minors to CDCR facilities for court ordered evaluations or for court ordered emergency housing for the safety of the minor. The signing of the resolution does not obligate Placer County to place minors with the CDCR for any reason.

The placement of a minor into a CDCR facility is at the discretion of the Court for diagnostic evaluations and once ordered, the Probation Department is bound to act accordingly. The placement of a minor into a CDCR facility is at the discretion of the Court in conjunction with the Chief Probation Officer for emergency housing.

Court ordered evaluations are a budgeted expense of \$20,070 each to the County (A total of two (2) are budgeted per year for a two year contract). The Probation Department proposes using funds budgeted for Support and Care of Minors to cover the cost of the required CDCR services.

Emergency housing expenses would be accounted for from monies budgeted for the Support and Care of minors. The Department has never required the use of these services from the State. The State has begun requiring that a contract be in place with each County should a County want to avail themselves of these services. While the Department does not anticipate

the need for these services, should the Department be faced with securely detaining a minor who is as violent as to pose a risk of harm to themselves or to staff, the need for these services would be immediate.

Emergency housing is not a budgeted expense due to the fact that the duration and therefore the total expense would be unknown until after an occurrence has happened. Based on average length of stays for minors in our facility, in conjunction with the typical length of time for adjudication of minors, the Department would expect an expense of no more than \$10,414.80 per occurrence to the County (A total of ninety days per incident at a rate of \$115.72 per day contract). The Department would allow for the potential of two occurrences over the span of the two year contract. Should the need for the use of this contract arise, the Probation Department would use funds budgeted for Support and Care of Minors to cover the cost of the required CDCR services.

FISCAL IMPACT

There is no new County cost associated with either contract. The costs associated with either contract are included within the Department's Proposed Fiscal Year 2015 - 2016 budget.

Attachment 1 - Probation Department's CDCR 90 day diagnostic contract

Attachment 2 - Probation Department's CDCR emergency housing contract

Before the Board of Supervisors
County of Placer, State of California

In the matter of: A resolution authorizing the Chief Probation Officer to sign and approve annual contracts with the California Department of Corrections and Rehabilitation for the purpose of providing comprehensive diagnostic, therapeutic, and rehabilitative services to minors residing in California; as well as emergency housing of minors as specified in Welfare and Institutions Code.

Resol. No: _____

Related to Ord. No: _____

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The following Resolution was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held on August 18, 2015.

by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Chairman, Board of Supervisors

Attest:
Clerk of said Board

WHEREAS, the Juvenile Courts may remand a minor into California Department of Corrections and Rehabilitation (Division of Juvenile Justice) custody and require said minor to be observed and evaluated for diagnostic purposes in a CDCR facility; and

WHEREAS, the Chief Probation Officer may request the California Department of Corrections and Rehabilitation (Division of Juvenile Justice) to house a minor on an emergency basis pending adjudication for the safety of the minor, as well as for the safety of Placer County staff; and

WHEREAS, the CDCR requires each County wishing to place minors in their facilities to enter in to an annual contract with the CDCR; and

WHEREAS, the Board of Supervisors intends to authorize the Chief Probation Officer to enter into said contracts in order to allow the Probation Department to place Placer County juveniles in CDCR facilities as needed for observation and evaluation; and

COPY

WHEREAS, the Board of Supervisors intends to authorize the Chief Probation Officer to enter into said contracts in order to allow the Probation Department to place Placer County juveniles in CDCR facilities as needed on an emergency basis for housing purposes; Now,

THEREFORE, BE IT RESOLVED that the Board of Supervisors hereby authorizes the Chief Probation Officer to formally enter the County of Placer into annual contracts for diagnostic screenings and/or emergency housing only with the CDCR, Division of Juvenile Justice.

AGREEMENT NUMBER

5600005580

REGISTRATION NUMBER

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

STATE AGENCY'S NAME

California Department of Corrections and Rehabilitation (CDCR)

CONTRACTOR'S NAME

County of Placer

2. The term of this Agreement is: July 1, 2015 through June 30, 2017

3. The maximum amount of this Agreement is: \$ (80,284.00) Reimbursement to CDCR
 Eighty Thousand Two Hundred Eighty Dollars and Zero Cents

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

Exhibit A – Scope of Work	2 pages
Exhibit B – Budget Detail and Payment Provisions	1 page
Exhibit B-1 – Rate Sheet	1 page
Exhibit C* – General Terms and Conditions	GTC 610
Exhibit D – Special Terms and Conditions	13 pages
Exhibit E – Business Associates Agreement (HIPAA)	13 pages

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
 These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language

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

CONTRACTOR

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

County of Placer

BY (Authorized Signature)

DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Marshall Hopper, Chief Probation Officer

ADDRESS

2929 Richardson Drive, Suite B
 Auburn, CA 95603

STATE OF CALIFORNIA

AGENCY NAME

California Department of Corrections and Rehabilitation (CDCR)

BY (Authorized Signature)

DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Terri Gibson, SSMI, Headquarters Contract Unit #3

ADDRESS

9838 Old Placerville Road, Suite B-2, Sacramento, CA 95827

California Department of General Services
 Use Only

Exempt per: CDCR #3

DIAGNOSTIC STUDIES, TREATMENT SERVICES AND CASE REFERRALS

1 Introduction

The California Department of Corrections and Rehabilitation, Division of Juvenile Justice Facilities (CDCR/DJJ) agree to provide **Diagnostic Studies, Treatment Services and Temporary Detention** for case referrals from **Juvenile Court to the County of Placer** as described herein. The County of **Placer** agrees to compensate CDCR/DJJ per Exhibit B-1. The location will be determined by the court requesting the Diagnostic Study in each individual case. The services shall be performed at CDCR/DJJ facilities. The services shall be provided for the term of this contract, Upon Approval through June 30, 2017.

2. Services

Section 1752.1 of the Welfare and Institutions Code of the State of California provides that the Director may enter into contracts with the approval of the Director of Finance **with any county of this state**, upon request of the Board of Supervisors thereof, wherein the CDCR/DJJ agrees to furnish diagnostic and treatment services and temporary detention during a period of study to the county for selected cases of person eligible for commitment to the CDCR/DJJ.

3. The Parties hereto agree as follows

A Juvenile Court has determined that a person is eligible for commitment to CDCR/DJJ and in any county in which there is in effect a contract made pursuant to Section 1752.1 and 1731.6 of the Welfare and Institutions Code if a court has determined that a person comes within the provisions of Section 1731.5 and concludes that a proper disposition of the case requires such observation and diagnosis as can be made at the CDCR/DJJ.

The court may continue the hearing and order that such a person be placed temporarily in such a center for a period **not to exceed 90 days**, with the further provision in such order that the Director of the DJJ facilities report to the court its diagnosis and recommendations concerning the person within the 90 day period.

The Director of CDCR/DJJ facilities shall, **within the 90 days**, cause the person to be observed and examined and shall forward to the court his diagnosis and recommendation concerning such person's future, care, supervision, and treatment.

The CDCR/DJJ shall accept such person if it believes that the person can be materially benefited by such diagnostic and treatment services and if the Director for CDCR/DJJ facilities certifies that staff and institutions are available. No such person shall be transported to any facility under the jurisdiction of the CDCR/DJJ until the Director has notified the referring court of the place to which such person is to be transported and of the time at which he can be received.

The Sheriff of the county in which an order is made placing a person in a diagnostic and treatment center **pursuant to this section (1731.6)**, or any other peace officer designated by the court, shall execute the order placing such person in the center or returning him there

from the court. The expense of such Sheriff or other peace officer incurred in executing such order is a charge upon the county in which the court is situated.

4. CDCR Responsibilities

The daily operations will be consistent with the CDCR/DJJ minimum standards and training that the CDCR/DJJ staff receives. These operations include feeding, clothing, count procedures, hygiene, room clean up and recreation. The CDCR/DJJ shall provide, as deemed needed by medical staff, routine medical, dental or mental health treatment, and routine periodic medical examinations for county juveniles housed in custody under this Agreement. Routine medical costs shall be included in the total amount of this agreement. The County shall provide and pay for any and all ancillary medical services, including, but not limited to: Dental, Optical, Non-Emergency surgical and special consultation services.

In the event that emergency medical treatment or emergency mental health treatment is deemed necessary by the CDR/DJJ medical staff for any County Juvenile(s) housed in custody under this Agreement, said treatment shall be performed in a facility designated by CDCR/DJJ medical staff at the expense of the County. The County shall be responsible for reimbursement of transportation costs incurred in acquisition of treatment, including costs for security staff. The service providers for said treatment shall directly invoice the County, which is solely responsible for costs.

The CDCR/DJJ staff shall notify the County within twenty-four hours of any emergency medical treatment or emergency mental health treatment administered to any person sent to CDCR/DJJ by the County for diagnostic services, and shall engage with the County regarding said placement. Notification shall include the name of the person receiving the treatment, the name, address, and phone number of the location where the treatment is being administered, and the name of a contact person at the treatment facility.

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

State Agency: CDCR/DJJ	County of Placer
Name: Eleanor Silva	Name: Marshall Hopper Chief Probation Officer
Phone: (916) 683-7474	Phone: (530) 889-7915
Fax: (916) 683-7767	Fax: (530) 889-7950
Email : eleanor.silva@cdcr.ca.gov	Email : mhopper@placer.ca.gov

Direct all inquiries to:

State Agency: CDCR/DJJ	County of Placer
Section/Unit: I&C County Referral	Section/Unit:
Attention: Cathy Cabral	Attention: Chris Artim, Sr. Admin Srvs Officer
Address: P. O. Box 588501, Elk Grove, CA 95758-8501	Address: 2929 Richardson Drive, Suite B Auburn, CA 95603
Phone: (916) 683-7492	Phone: (530) 889-7912
Fax: (916) 683-7767	Fax: (530) 889-7950
Email : cathy.cabral@cdcr.ca.gov	Email : cartim@placer.ca.gov

1. **Invoicing and Payment (reimbursement contracts)**

- a. The CDCR will submit an Invoice to the Contractor, by the 10th day of each month for the preceding month's services; based on the rates specified in Exhibit B-1, Rate Sheet, which is attached hereto and made part of this Agreement.
- b. Invoices will be due within thirty (30) days of the statement date and shall be remitted to the appropriate CDCR Accounting office below:

California Department of Corrections and Rehabilitation (CDCR)
Accounting Services Branch (ASB) – Rancho Cucamonga
Attention: Accounts Receivable
PO Box 6000
Rancho Cucamonga, CA 91729-6000

AND

California Department of Corrections and Rehabilitation (CDCR)
Division of Juvenile Justice
Attn: Accounts
P.O. Box 588501
Elk Grove, CA 95758-8501

DIAGNOSTIC STUDIES, TREATMENT SERVICES AND CASE REFERRALS

Invoicing and Payment

For services satisfactorily rendered, and upon receipt and approval of State Agency invoices, the County agrees to compensate the California Department of Corrections and Rehabilitation Division of Juvenile Justice (CDCR/DJJ) in accordance with this Agreement. The CDCR/DJJ may suspend accepting referrals in the event the County is delinquent in payments to CDCR/DJJ by 60 days or more and shall have the right to continue such suspension until the account is brought current.

<u>Daily Rate Per Youth x Estimated # of Days* = Total per Fiscal Year</u>					
FY 15/16	\$223.00	x	180	=	\$40,140.00
FY 16/17	\$223.00	x	180	=	\$40,140.00
			Total		\$80,280.00

The County of Placer is allocated **\$80,280.00** for the life of this contract, upon approval through June 30, 2017, and agrees to reimburse CDCR/DJJ to provide Diagnostic Studies, Treatment Services and Temporary Detention for case referrals from Juvenile and/or Criminal Courts. Any fraction thereof shall be computed at **Two Hundred Twenty-Three Dollars and No Cents (\$223.00) per day or any part of a day**, such costs having been determined by the Director for the Division of Juvenile Justice of CDCR to be necessary to reimburse the State for the costs incurred. Notwithstanding the budget allocation stated above, the County of Placer agrees to compensate CDCR for each referral in accordance with the rate schedules of this Agreement even if the total compensation exceeds the budget.

*Estimated number of days to be used during the term of the contract.

1. Confidentiality of Data

All financial, statistical, personal, technical and other data and information relating to either Party's operation, which are designated confidential by a Party and made available to carry out this Agreement, or which become available to the other Party in order to carry out this Agreement, shall be protected by the Party from unauthorized use and disclosure.

No reports, information, inventions, improvements, discoveries, or data obtained, repaired, assembled, or developed by the Parties pursuant to this Agreement shall be released, published, or made available to any person.

The Parties by acceptance of this Agreement are violation of any State or Federal law, unless required to do so under an appropriate public records act request. subject to all of the requirements of California Government Code Section 11019.9 and California Civil Code Sections 1798, et seq., regarding the collection, maintenance, and disclosure of personal and confidential information about individuals.

2. Accounting Principles

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

3. Taxes

Unless required by law, the State of California is exempt from federal excise taxes.

4. Right to Terminate (Supersedes provision number 7, Termination for Cause, of Exhibit C)

The parties hereto agree that either party may cancel this Agreement by giving the other party written notice thirty (30) days in advance of the effective date of such cancellation. In the event of such termination, the State agrees to pay Contractor for actual services rendered up to and including the date of termination.

The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

5. Extension of Term

If it is determined to be in the best interest of the Parties, upon agreement, the State may extend this contract, with no increase in service cost, for a period of one (1) year or less.

6. Parties Employee Misconduct

During the performance of this Agreement, it shall be the responsibility of the Parties whenever there is an incident of use of force or allegation(s) of employee misconduct associated with and directly impacting inmate and/or parolee rights, to immediately notify the other Party of the incident(s), to cause an investigation to be conducted, and to the other Party with all relevant information pertaining to the incident(s). All relevant information includes, but is not limited to: a) investigative reports; b) access to inmates/parolees and the associated staff; c) access to employee personnel records; d) that information reasonably necessary to assure the other Party that inmates 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 Party has taken such remedial action, in the event of unnecessary or excessive force, or employee misconduct with inmates and/or parolees, as will assure against a repetition of incident(s) or retaliation.

7. Subcontracting

Services provided are to be performed primarily with the staff of the public entity or, in the case of educational institutions, auxiliaries or foundations, by the faculty, staff or students associated with the particular institution. Agreements are not to be used by state agencies to circumvent the competitive bidding requirements of Public Contract Code Section 10340.

If more than twenty-five (25) percent of the total contract amount or \$50,000.00, whichever is less, is subcontracted, non-competitive bid approval must be obtained from the Secretary of CDCR and the Department of General Services prior to the commencement of services, unless the subcontract was competitively bid or the subcontractor(s) also qualifies as a state agency, governmental agency, or joint power.

8. Subcontractor/Consultant Information

The Parties is required to identify all subcontractors and consultants who will perform labor or render services in the performance of this Agreement. Additionally, the Parties shall notify one another, in writing, within ten (10) working days, of any changes to the subcontractor and/or consultant information.

9. Liability for Nonconforming Work

The Parties will be fully responsible for ensuring that the completed work conforms to the agreed upon terms. If nonconformity is discovered prior to the Party's deadline, the Party will be given a reasonable opportunity to cure the nonconformity. If the nonconformity is discovered after the deadline for the completion of the project, Party, in its sole discretion, may use any reasonable means to cure the nonconformity. The Party shall be responsible for reimbursing the other Party for any additional expenses incurred to cure such defects.

10. Contract Violations

The Parties acknowledges that any violation of Chapter 2, or any other chaptered provision of the Public Contract Code (PCC), is subject to the remedies and penalties contained in PCC Sections 10420 through 10425.

11. Employment of Ex-Offenders

A Party cannot and will not either directly, or on a subcontract basis, employ in connection with this Agreement:

- a. Ex-Offenders on active parole or probation, who have been on active parole or probation during the last three years preceding their employment;
 1. The Party shall only employ ex-offenders who can provide written evidence of having satisfactorily completed parole or probation, and who have remained off parole or probation, and have had no arrests or convictions within the past three years.
- b. Ex-offenders convicted of drug trafficking in a prison/jail; escape or aiding/abetting escape; battery on a Peace Officer or Public Official; arson offenses; or, any violations of Penal Code Sections 4570-4574 (unauthorized Communications with Prisons and Prisoners Offenses).
- c. Ex-Offenders are required to register as a sex offender pursuant to Penal Code Section 290.
- d. Any ex-offender who has an offense history involving a "violent felony" as defined in subparagraph (c) of Penal Code Section 667.5; or
- e. Any ex-offender in a position which provides direct supervision of parolees.

An ex-offender whose assigned duties 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 or contractor. Evidence of such bond shall be supplied to CDCR prior to employment of the ex-offender.

12. Conflict of Interest

The Parties 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. and Title 15, Section 3409, and the Department Operations Manual (DOM) Section 31100 et seq. regarding conflicts of interest.

a. Parties and Their Employees

The Parties shall file a Statement of Economic Interests, Fair Political Practices Commission (FPPC) Form 700 prior to commencing services under the Agreement, annually during the life of the Agreement, and within thirty (30) days after the expiration of the Agreement.

b. Current State Employees

- (1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- (2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

- (3) In addition to the above, CDCR officials and employees shall also avoid actions resulting in or creating an appearance of:
 - (a) Using an official position for private gain;
 - (b) Giving preferential treatment to any particular person;
 - (c) Losing independence or impartiality;
 - (d) Making a decision outside of official channels; and
 - (e) Affecting adversely the confidence of the public or local officials in the integrity of the program.
- (4) Officers and employees of the Department must not solicit, accept or receive, directly or indirectly, any fee, commission, gratuity or gift from any person or business organization doing or seeking to do business with the State.

c. Former State Employees

- (1) For the two year (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 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 twelve-month (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 Parties shall avoid any conflict of interest whatsoever with respect to any financial dealings, employment services, or opportunities offered to inmates or parolees. The Parties shall not themselves employ or offer to employ inmates or parolees either directly or indirectly through an affiliated company, person or business unless specifically authorized in writing by other Party. In addition, the Parties shall not (either directly, or indirectly through an affiliated company, person or business) engage in financial dealings with inmates 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 other Party.

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

The Parties shall have a continuing duty to keep the other Party timely and fully apprised in writing of any material changes in the Party'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 Party's business status or structure that could affect the performance of the Party's duties under the Agreement.

If the Parties violates any provision of the above paragraphs, such action by the Party shall render this Agreement void.

Members of boards and commissions are exempt from this section if they do not receive payment other than payment for each meeting of the board or commission, payment for preparatory time and payment for per diem.

13. Notification of Personnel Changes

The State must notify the Contractor in writing, of any changes of those personnel allowed access to Contractor premises for the purpose of providing services under this Agreement. In addition, the State must recover and return any Contractor issued identification card provided to Contractor's employee(s) upon their departure or termination.

14. Computer Software

The State 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.

15. Expendable Equipment

Expendable equipment is defined as expendable items which change with use and have a unit acquisition cost of less than \$5,000 per unit (i.e. fax machines, computers, printers, etc.). Title to any expendable equipment purchased or built with State funds as part of this agreement will vest in the State. The Contractor must retain a listing of expendable equipment purchases that are considered "theft-sensitive" items, such as cameras, calculators, two-way radios, computer equipment, etc., for audit purposes. Upon completion or termination of the agreement, Contractors are required to leave all expendable equipment for use by subsequent contractors or for the State to dispose of accordingly. The State may authorize the continued use of such equipment for work to be performed under a different agreement.

The cost of expendable equipment purchased should be comparable to the prevailing price for similar items in the surrounding area.

16. Electronic Waste Recycling

The Parties certify that they comply 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. The Parties shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

17. Liability for Loss and Damages

Any damages by the State to the Contractor's facility including equipment, furniture, materials or other Contractor property, will be repaired or replaced by the Contractor to the satisfaction of the Contractor at no cost to the Contractor. The Contractor may, at its option, repair any such damage and include the cost thereof from any invoice due to the State under this Agreement.

18. Disclosure

The State agrees to disclose to the Contractor any statement(s) known made by any inmate or parolee which indicate violence may result in any specific situation, and the same responsibility will be shared by the Contractor in disclosing such statement(s) to the State.

19. Workers' Compensation

The Parties hereby represents and warrants that The Party is currently and shall, for the duration of this agreement, carry workers' compensation insurance, at the Party's expense, or that it is self-insured through a policy acceptable to the other Party for all of its employees who will be engaged in the performance of 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 thirty (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 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.

The Party also agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all of the Party's workers' compensation claims and losses by Party's officers, agents and employees related to the performance of this agreement.

20. Insurance Requirements

Insurance as required herein shall be a condition of the Parties obligation to pay for services provided under this Agreement. Prior to approval of this Agreement and before performing any work, the Parties and any subcontractors shall furnish to the other Party evidence of valid coverage. The following shall be considered evidence of coverage: A certificate of insurance, a "true and certified" copy of the policy, or any other proof of coverage issued by Contractor's insurance carrier. Binders are not acceptable as evidence of coverage. Providing evidence of coverage to the Party conveys no rights or privileges to the State, nor does it insure any Party employee or insure any premises owned, leased, used by or otherwise or under the control of the Party. It does, however, serve to provide the Party with proof that the other Party and any subcontractors are insured at the minimum levels required by the State of California.

The Parties agree that any liability insurance required in the performance of this Agreement shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires or is canceled during the term of this Agreement, a Party shall provide the other Party within five (5) business days of receipt by a Party a copy of any notice of cancellation or non-renewal of insurance required by the contract. Evidence of coverage required in the performance of this Agreement shall not be for less than the remainder of the term of this Agreement or for a period of not less than one year. The Parties reserve the

right to verify the Party's evidence of coverage; evidence of coverage is subject to the approval of the DGS. In the event a Party fails to keep insurance coverage as required herein in effect at all times, the other Party reserves the right to terminate this Agreement and to seek any other remedies afforded by the laws of California.

The Party hereby represents and warrants they (and any subcontractors) are currently and shall for the duration of this Agreement be insured. The Party shall provide proof of self-insurance against:

Commercial General Liability - \$1,000,000 per occurrence for bodily injury and property damage liability combined.

BUSINESS ASSOCIATES AGREEMENT (HIPAA)

DIAGNOSTIC STUDIES, TREATMENT SERVICES AND CASE REFERRALS

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 deterred 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 Correctional Health Care Services, 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:

County of Placer
Marshall Hopper, Chief Probation Officer
2929 Richardson Drive, Suite B
Auburn, CA 95603

Telephone: (530) 889-7915
Facsimile: (530) 889-7950

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

AGREEMENT NUMBER

5600005533

REGISTRATION NUMBER

COPY

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

STATE AGENCY'S NAME

California Department of Corrections and Rehabilitation (CDCR)

CONTRACTOR'S NAME

County of Placer

2. The term of this Agreement is: July 1, 2015 through June 30, 2017

3. The maximum amount of this Agreement is: \$ (20,829.60) Reimbursement to CDCR
 Twenty Thousand Eight Hundred Twenty-Nine Dollars and Sixty Cents

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

Exhibit A – Scope of Work	2 pages
Exhibit B – Budget Detail and Payment Provisions	1 page
Exhibit B-1 – Rate Sheet	1 page
Exhibit C* – General Terms and Conditions	GTC 610
Exhibit D – Special Terms and Conditions	13 pages
Exhibit E – Business Associates Agreement (HIPAA)	13 pages

Items shown with an Asterisk (), are hereby incorporated by reference and made part of this agreement as if attached hereto.
 These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language*

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

CONTRACTOR

California Department of General Services
 Use Only

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

County of Placer

BY (Authorized Signature)

DATE SIGNED (Do not type)

[Signature]

PRINTED NAME AND TITLE OF PERSON SIGNING

Marshall Hooper, Chief Probation Officer

ADDRESS

2929 Richardson Drive, Suite B
 Auburn, CA 95603

STATE OF CALIFORNIA

AGENCY NAME

California Department of Corrections and Rehabilitation (CDCR)

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Terri Gibson, SSMI, Headquarters Contract Unit #3

ADDRESS

9838 Old Placerville Road, Suite B-2, Sacramento, CA 95827

Exempt per: CDCR #3

EMERGENCY HOUSING

1. INTRODUCTION

The California Department of Corrections and Rehabilitation, Division of Juvenile Justice Facilities (CDCR/DJJ) agree to provide Emergency Housing for case referrals from Juvenile or Criminal Courts to the County of Placer as described herein. The County of Placer agrees to compensate CDCR/DJJ per the Rate Sheet (Exhibit B-1). The services shall be performed at CDCR/DJJ facilities determined by the location of the requesting court in each individual case throughout the term of this Agreement.

Section 1752.1 of the Welfare and Institutions Code of the State of California states, "The Director may enter into contracts with the approval of the Director of Finance with any county of this State, upon request of the board of supervisors thereof, wherein the Youth Authority agrees to furnish emergency housing services to the county for selected cases of person eligible for commitment to the Youth Authority."

2. COUNTY RESPONSIBILITIES

The County agrees to provide CDCR/DJJ a minimum of 24 hours in advance of any transfer for emergency housing of said juveniles. No person shall be transported to any institution under the jurisdiction of the CDCR/DJJ until the Director has been notified by the County of the transfer, by way of an order.

In the event that emergency medical treatment or emergency mental health treatment is deemed necessary by the CDCR/DJJ medical staff for any County Juvenile(s) housed in custody under this Agreement, the treatment shall be performed in a facility designated by CDCR/DJJ medical staff at the expense of the County. The County shall be responsible for reimbursement of transportation costs incurred in acquisition of treatment, including costs for security staff. The service providers for the treatment shall directly invoice the County.

3. CDCR/DJJ RESPONSIBILITIES

The Director of CDCR/DJJ shall, on a cases-by-case basis, accept said juveniles to be held at a CDCR/DJJ institution. The County shall be notified by CDCR/DJJ in writing of the decision to accept or reject each case. For accepted cases, the court shall transport said juvenile to the designated CDCR/DJJ institution. The CDCR/DJJ shall assume custody upon arrival at the institution and until release back into the custody of the County. The CDCR/DJJ may terminate acceptance of any case upon 24 hours written notice to the County.

The daily operations will be consistent with the CDCR/DJJ minimum standards and training that the CDCR/DJJ staff receives. These operations include feeding, clothing, count procedures, hygiene, room clean up and recreation. The CDCR/DJJ shall provide, as deemed needed by medical staff, routine medical, dental or mental health treatment, and routine periodic medical examinations for county juveniles housed in custody under this Agreement. Routine medical costs shall be included in the total amount of this agreement. The County shall provide and pay for any and all ancillary medical services, including, but not limited to: Dental, Optical, Non-Emergency surgical and special consultation service.

The CDCR/DJJ staff shall notify the County within 24 hours of any emergency medical treatment or emergency mental health treatment administered to any person sent to CDCR/DJJ by the County for diagnostic services, and shall mutually agree upon placement with the County. Notification shall include the name of the person receiving the treatment, the name, address, and phone number of the location where the treatment is being administered, and the name of a contact person at the treatment facility.

4. PROJECT REPRESENTATIVES

State Agency: CDCR	County of Placer
Name: Eleanor Silva	Name: Marshall Hopper
Phone: (916) 683-7474	Chief Probation Officer
Fax: (916) 683-7768	Phone: (530) 889-7915
Email: Eleanor.silva@cdcr.ca.gov	Fax: (530) 889-7950

Direct all inquiries to:

State Agency: CDCR	County of Placer
Section/Unit: Case Services Section	Section/Unit:
Attention: Cathy Cabral	Attention: Chris Artim, Sr. Admin Srvs Officer
Address: PO Box 588501 Sacramento, CA 95758-8501	Address: 2929 Richardson Drive, Suite B Auburn, CA 95603
Phone: (916) 683-7492	Phone : (530) 889-7912
Fax: (916) 683-7768	Fax: (530) 889-7950
Email: Cathy.cabral@cdcr.ca.gov	

1. **Invoicing and Payment (reimbursement contracts)**

- a. The CDCR will submit an Invoice to the Contractor, by the 10th day of each month for the preceding month's services; based on the rates specified in Exhibit B-1, Rate Sheet, which is attached hereto and made part of this Agreement.
- b. Invoices will be due within thirty (30) days of the statement date and shall be remitted to the appropriate CDCR Accounting office below:

California Department of Corrections and Rehabilitation (CDCR)
Accounting Services Branch (ASB) – Rancho Cucamonga
Attention: Accounts Receivable
PO Box 6000
Rancho Cucamonga, CA 91729-6000

AND

California Department of Corrections and Rehabilitation (CDCR)
Division of Juvenile Justice
Attn: Accounts
P.O. Box 588501
Elk Grove, CA 95758-8501

EMERGENCY HOUSING

	<u>Daily Rate Per Youth</u>	<u>x</u>	<u>Estimated # of Days*</u>	<u>=</u>	<u>Total per Fiscal Year</u>
FY 15/16	\$115.72	x	90	=	\$ 10,414.80
FY 16/17	\$115.72	X	90	=	\$ 10,414.80
					<u>\$ 20,829.60</u>

(REIMBURSEMENT CONTRACT)

The County of Placer is allocated \$20,829.60 for the life of this contract, Upon Approval through June 30, 2017, and agrees to reimburse the California Department of Corrections and Rehabilitation Division of Juvenile Justice (CDCR/DJJ) to provide Emergency Housing Services of juvenile youth of the court from the County of Placer, as outlined in Welfare and Institution Code Section 1752.15. The County of Placer will be charged the daily rate of One Hundred Fifteen Dollars and Seventy Two Cents (\$115.72) per day or any part of a day. Such costs having been determined by the Director for the Division of Juvenile Justice of CDCR to be necessary to reimburse the State for the costs incurred. Notwithstanding the budget allocation stated above, the County of Placer agrees to compensate CDCR for each referral in accordance with the rate schedules of this Agreement even if the total compensation exceeds the budget.

CDCR/DJJ shall bill the County monthly, by means of itemized statements, for each youth, and the County shall make remittance or payment thereof within thirty (30) days of receipt of such billing.

*Estimated number of days to be used during the term of the contract.

1. Confidentiality of Data

All financial, statistical, personal, technical and other data and information relating to either Party's operation, which are designated confidential by a Party and made available to carry out this Agreement, or which become available to the other Party in order to carry out this Agreement, shall be protected by the Party from unauthorized use and disclosure.

No reports, information, inventions, improvements, discoveries, or data obtained, repaired, assembled, or developed by the Parties pursuant to this Agreement shall be released, published, or made available to any person.

The Parties by acceptance of this Agreement are violation of any State or Federal law, unless required to do so under an appropriate public records act request. subject to all of the requirements of California Government Code Section 11019.9 and California Civil Code Sections 1798, et seq., regarding the collection, maintenance, and disclosure of personal and confidential information about individuals.

2. Accounting Principles

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

3. Taxes

Unless required by law, the State of California is exempt from federal excise taxes.

4. Right to Terminate (Supersedes provision number 7, Termination for Cause, of Exhibit C)

The parties hereto agree that either party may cancel this Agreement by giving the other party written notice thirty (30) days in advance of the effective date of such cancellation. In the event of such termination, the State agrees to pay Contractor for actual services rendered up to and including the date of termination.

The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

5. Extension of Term

If it is determined to be in the best interest of the Parties, upon agreement, the State may extend this contract, with no increase in service cost, for a period of one (1) year or less.

6. Parties Employee Misconduct

During the performance of this Agreement, it shall be the responsibility of the Parties whenever there is an incident of use of force or allegation(s) of employee misconduct associated with and directly impacting inmate and/or parolee rights, to immediately notify the other Party of the incident(s), to cause an investigation to be conducted, and to the other Party with all relevant information pertaining to the incident(s). All relevant information includes, but is not limited to: a) investigative reports; b) access to inmates/parolees and the associated staff; c) access to employee personnel records; d) that information reasonably necessary to assure the other Party that inmates 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 Party has taken such remedial action, in the event of unnecessary or excessive force, or employee misconduct with inmates and/or parolees, as will assure against a repetition of incident(s) or retaliation.

7. Subcontracting

Services provided are to be performed primarily with the staff of the public entity or, in the case of educational institutions, auxiliaries or foundations, by the faculty, staff or students associated with the particular institution. Agreements are not to be used by state agencies to circumvent the competitive bidding requirements of Public Contract Code Section 10340.

If more than twenty-five (25) percent of the total contract amount or \$50,000.00, whichever is less, is subcontracted, non-competitive bid approval must be obtained from the Secretary of CDCR and the Department of General Services prior to the commencement of services, unless the subcontract was competitively bid or the subcontractor(s) also qualifies as a state agency, governmental agency, or joint power.

8. Subcontractor/Consultant Information

The Parties-is required to identify all subcontractors and consultants who will perform labor or render services in the performance of this Agreement. Additionally, the Parties shall notify one another, in writing, within ten (10) working days, of any changes to the subcontractor and/or consultant information.

9. Liability for Nonconforming Work

The Parties will be fully responsible for ensuring that the completed work conforms to the agreed upon terms. If nonconformity is discovered prior to the Party's deadline, the Party will be given a reasonable opportunity to cure the nonconformity. If the nonconformity is discovered after the deadline for the completion of the project, Party, in its sole discretion, may use any reasonable means to cure the nonconformity. The Party shall be responsible for reimbursing the other Party for any additional expenses incurred to cure such defects.

10. Contract Violations

The Parties acknowledges that any violation of Chapter 2, or any other chaptered provision of the Public Contract Code (PCC), is subject to the remedies and penalties contained in PCC Sections 10420 through 10425.

11. Employment of Ex-Offenders

A Party cannot and will not either directly, or on a subcontract basis, employ in connection with this Agreement:

- a. Ex-Offenders on active parole or probation, who have been on active parole or probation during the last three years preceding their employment;
 1. The Party shall only employ ex-offenders who can provide written evidence of having satisfactorily completed parole or probation, and who have remained off parole or probation, and have had no arrests or convictions within the past three years.
- b. Ex-offenders convicted of drug trafficking in a prison/jail; escape or aiding/abetting escape; battery on a Peace Officer or Public Official; arson offenses; or, any violations of Penal Code Sections 4570-4574 (unauthorized Communications with Prisons and Prisoners Offenses).
- c. Ex-Offenders are required to register as a sex offender pursuant to Penal Code Section 290.
- d. Any ex-offender who has an offense history involving a "violent felony" as defined in subparagraph (c) of Penal Code Section 667.5; or
- e. Any ex-offender in a position which provides direct supervision of parolees.

An ex-offender whose assigned duties 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 or contractor. Evidence of such bond shall be supplied to CDCR prior to employment of the ex-offender.

12. Conflict of Interest

The Parties 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. and Title 15, Section 3409, and the Department Operations Manual (DOM) Section 31100 et seq. regarding conflicts of interest.

a. Parties and Their Employees

The Parties shall file a Statement of Economic Interests, Fair Political Practices Commission (FPPC) Form 700 prior to commencing services under the Agreement, annually during the life of the Agreement, and within thirty (30) days after the expiration of the Agreement.

b. Current State Employees

- (1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- (2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

- (3) In addition to the above, CDCR officials and employees shall also avoid actions resulting in or creating an appearance of:
 - (a) Using an official position for private gain;
 - (b) Giving preferential treatment to any particular person;
 - (c) Losing independence or impartiality;
 - (d) Making a decision outside of official channels; and
 - (e) Affecting adversely the confidence of the public or local officials in the integrity of the program.
- (4) Officers and employees of the Department must not solicit, accept or receive, directly or indirectly, any fee, commission, gratuity or gift from any person or business organization doing or seeking to do business with the State.

c. Former State Employees

- (1) For the two year (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 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 twelve-month (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 Parties shall avoid any conflict of interest whatsoever with respect to any financial dealings, employment services, or opportunities offered to inmates or parolees. The Parties shall not themselves employ or offer to employ inmates or parolees either directly or indirectly through an affiliated company, person or business unless specifically authorized in writing by other Party. In addition, the Parties shall not (either directly, or indirectly through an affiliated company, person or business) engage in financial dealings with inmates 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 other Party.

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

The Parties shall have a continuing duty to keep the other Party timely and fully apprised in writing of any material changes in the Party'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 Party's business status or structure that could affect the performance of the Party's duties under the Agreement.

If the Parties violates any provision of the above paragraphs, such action by the Party shall render this Agreement void.

Members of boards and commissions are exempt from this section if they do not receive payment other than payment for each meeting of the board or commission, payment for preparatory time and payment for per diem.

13. Notification of Personnel Changes

The State must notify the Contractor in writing, of any changes of those personnel allowed access to Contractor premises for the purpose of providing services under this Agreement. In addition, the State must recover and return any Contractor issued identification card provided to Contractor's employee(s) upon their departure or termination.

14. Computer Software

The State 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.

15. Expendable Equipment

Expendable equipment is defined as expendable items which change with use and have a unit acquisition cost of less than \$5,000 per unit (i.e. fax machines, computers, printers, etc.). Title to any expendable equipment purchased or built with State funds as part of this agreement will vest in the State. The Contractor must retain a listing of expendable equipment purchases that are considered "theft-sensitive" items, such as cameras, calculators, two-way radios, computer equipment, etc., for audit purposes. Upon completion or termination of the agreement, Contractors are required to leave all expendable equipment for use by subsequent contractors or for the State to dispose of accordingly. The State may authorize the continued use of such equipment for work to be performed under a different agreement.

The cost of expendable equipment purchased should be comparable to the prevailing price for similar items in the surrounding area.

16. Electronic Waste Recycling

The Parties certify that they comply 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. The Parties shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

17. Liability for Loss and Damages

Any damages by the State to the Contractor's facility including equipment, furniture, materials or other Contractor property, will be repaired or replaced by the Contractor to the satisfaction of the Contractor at no cost to the Contractor. The Contractor may, at its option, repair any such damage and include the cost thereof from any invoice due to the State under this Agreement.

18. Disclosure

The State agrees to disclose to the Contractor any statement(s) known made by any inmate or parolee which indicate violence may result in any specific situation, and the same responsibility will be shared by the Contractor in disclosing such statement(s) to the State.

19. Workers' Compensation

The Parties hereby represents and warrants that The Party is currently and shall, for the duration of this agreement, carry workers' compensation insurance, at the Party's expense, or that it is self-insured through a policy acceptable to the other Party for all of its employees who will be engaged in the performance of 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 thirty (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 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.

The Party also agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all of the Party's workers' compensation claims and losses by Party's officers, agents and employees related to the performance of this agreement.

20. Insurance Requirements

Insurance as required herein shall be a condition of the Parties obligation to pay for services provided under this Agreement. Prior to approval of this Agreement and before performing any work, the Parties and any subcontractors shall furnish to the other Party evidence of valid coverage. The following shall be considered evidence of coverage: A certificate of insurance, a "true and certified" copy of the policy, or any other proof of coverage issued by Contractor's insurance carrier. Binders are not acceptable as evidence of coverage. Providing evidence of coverage to the Party conveys no rights or privileges to the State, nor does it insure any Party employee or insure any premises owned, leased, used by or otherwise or under the control of the Party. It does, however, serve to provide the Party with proof that the other Party and any subcontractors are insured at the minimum levels required by the State of California.

The Parties agree that any liability insurance required in the performance of this Agreement shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires or is canceled during the term of this Agreement, a Party shall provide the other Party within five (5) business days of receipt by a Party a copy of any notice of cancellation or non-renewal of insurance required by the contract. Evidence of coverage required in the performance of this Agreement shall not be for less than the remainder of the term of this Agreement or for a period of not less than one year. The Parties reserve the

right to verify the Party's evidence of coverage; evidence of coverage is subject to the approval of the DGS. In the event a Party fails to keep insurance coverage as required herein in effect at all times, the other Party reserves the right to terminate this Agreement and to seek any other remedies afforded by the laws of California.

The Party hereby represents and warrants they (and any subcontractors) are currently and shall for the duration of this Agreement be insured. The Party shall provide proof of self-insurance against:

Commercial General Liability - \$1,000,000 per occurrence for bodily injury and property damage liability combined.

BUSINESS ASSOCIATES AGREEMENT (HIPAA)

EMERGENCY 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 deterred 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 Correctional Health Care Services, 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:

County of Sacramento
Marshall Hooper, Chief Probation Officer
2750 Business Park Drive, Suite 220
Sacramento, CA 95827

Telephone: (530) 889-7915
Facsimile: (530) 889-7950

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