

**OFFENDER RELOCATION/HOUSING**

AGREEMENT BETWEEN  
STATE OF CALIFORNIA  
AND  
CORRECTIONS CORPORATION OF AMERICA

This Contract is entered into effective October 19, 2006, between the **State of California Department of Corrections and Rehabilitation** (hereinafter “STATE” or “CDCR”) and The Corrections Corporation of America, 10 Burton Hills Blvd., Nashville, Tennessee, 37215 (hereinafter “**CONTRACTOR**”).

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

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

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

**Article I.**

**DEFINITIONS**

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

**CCR, Title 15** - means the California Code of Regulations, Title 15, “Crime Prevention and Corrections”.

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

**Commencement of Services date** – means the first day a CDCR Offender is housed at the Facility pursuant to this Agreement.

**Contract** – means this Agreement.

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

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**Day** - means calendar day unless otherwise defined in this agreement. If the last day falls on a weekend or holiday the last day for performance shall be the next regular business day.

**DOM** – means the CDCR Departmental Operations Manual.

**Facility** – means the correctional institutions operated by the CONTRACTOR in the states of Arizona, Mississippi, Oklahoma and Tennessee, known as the Florence Correctional Center, Tallahatchie Correctional Facility, North Fork Correctional Facility, Diamondback Correctional Facility and the West Tennessee Correctional Facility.

**HIPPA** – means the federal Health Insurance Portability and Privacy Act.

**Initial Phase-In Period** – means the period of time beginning with the first day a CDCR Offender is received at the Facility and ending on the day that the Facility achieves the Minimum Normalized Occupancy, or 120 days after the first day a CDCR Offender is received at the Facility, whichever first occurs.

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

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

**Lockdown** - means that a portion of the facility is affected by suspension of required programs or services, and offenders are not released except as determined by the facility administration on an individual, case-by-case basis. As determined by the facility administration, under such circumstances only critical inmate workers in the affected housing units / sub-facilities will be permitted to attend work assignments under escort, and all but essential functions are suspended in those affected housing units or sub-facilities, e.g. yard, canteen draws, religious services and visiting.

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

**Minimum Normalized Occupancy** – means 90% of the capacity allocated to CDCR Offenders at the Facilities, which for this Agreement equates to:

- Florence Detention Center (440) - 396 Inmates
- North Fork Correctional Facility (240) - 216 Inmates
- Diamond Back Correctional Facility (240) - 216 Inmates
- West Tennessee Detention Facility (80) – 72 Inmates

Provided however, this capacity may be increased by mutual agreement in a writing signed by both parties and affixed as an Amendment hereto as additional capacity becomes available in the Facilities.

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

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

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

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

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

**UHR** - means Unit Health Record.

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

**Article II**

**TERM OF THE AGREEMENT**

**Section 2.01 Initial Term.**

The term of this Agreement shall be for three (3) years beginning on the Commencement of Services date and ending at 5:00 pm on a date which is three (3) full years thereafter, unless earlier terminated in accordance with the provisions of this Agreement.

**Section 2.02 Option to Extend Term.**

The parties shall have the right to extend the initial term of this Agreement for successive periods of up to and including two years each in addition to the initial term by mutual agreement. The parties agree that should they desire to extend the term of this agreement pursuant to this option, they shall notify one another of their desire to so extend the term not less than one year prior to the expiration of the initial term. The provisions of this Contract, as amended if so amended during that time, shall apply to any extended term, except that the compensation for the extended term shall be subject to negotiation between the parties. Should the parties not agree on a new rate of compensation to apply to the extended term, this Agreement shall terminate on the original termination date

**Section 2.03 Termination for Non-Appropriation.**

Notwithstanding anything set forth in the provisions of Article VIII, DEFAULT AND TERMINATION, this Agreement shall terminate in the event the State does not appropriate funds for the payments required hereunder.

**Section 2.04 Responsibility Hearing**

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

**Section 2.05 State Contacts**

Contract Monitor:  
Shall be designated by CDCR in writing prior to first occupancy.

California Out-of-State Correctional Facilities (CCOCF)  
Shall be designated by CDCR in writing prior to first occupancy.

Health Care Officer  
Shall be designated by CDCR in writing prior to first occupancy.

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

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

Office of Communications  
Oscar Hidalgo  
1515 S Street, Suite 502-S  
Sacramento, CA 95814  
Phone: (916) 323-2637  
Fax: (916) 442-2637

Office of Correctional Safety  
Shall be designated by CDCR in writing prior to first occupancy.

**CONTRACTOR Contacts**

Company Representative  
Shall be designated by CONTRACTOR in writing prior to first occupancy.

Facility Contact  
Shall be designated by CONTRACTOR in writing prior to first occupancy.

**Article III**

**CDCR OFFENDERS****Section 3.01 Offender Housing.**

The CONTRACTOR shall confine and supervise adult male CDCR Offenders that are transferred to the Facility pursuant to the terms and conditions of this Agreement. CDCR Offenders shall be transferred into the Facility in accordance with the Offender/Staff Phase-In Schedule, attached hereto and incorporated herein as Attachment "A", beginning on the Commencement of Services date. If CDCR has not provided Attachment A at the time of the execution of this agreement, said information shall be provided not less than 15 working days following execution, and shall be incorporated into this agreement at that time. Nothing in that schedule shall obligate the CONTRACTOR from accepting or the State from sending more than 200 inmates prior to the first thirty (30) days following execution. CDCR Offenders shall only be housed in housing units consistent with the offenders' classification and security needs, subject to the prior written approval of the CDCR Contract Monitor or designee. The schedule shall allow for maximum occupancy to be completed within the allotted 120-day initial phase in period.

**Section 3.02 Selection and Placement Process.**

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

3.02.1 Offenders assigned to the Facility shall not have known serious or significant mental health or serious or significant physical problems.

3.02.2 Offenders assigned to the Facility shall be males eighteen years of age or older.

3.02.3 CONTRACTOR may reject any offender found not to meet the receiving state's criteria or otherwise deemed by the CONTRACTOR, in consultation with CDCR, to be unsuitable for assignment to a particular Facility. In the event the initially considered Facility is deemed unsuitable for a particular offender, the CONTRACTOR shall make all due effort to assign offenders to an alternate appropriate Facility under this Agreement. If CDCR is unable to achieve the Minimum Normalized Occupancy by the end of the of the Initial Phase-In Period due to Contractor's rejection of offenders pursuant to this section, the Initial Phase-In Period shall be extended for thirty (30) days or until the Minimum Normalized Occupancy is achieved, whichever occurs first.

Prior to transfer, CONTRACTOR will review the classification, medical and conduct records of those offenders recommended by the CDCR to be housed at the Facility. The parties understand that the CONTRACTOR'S review shall include classification of the offender under the law of the state where the offender will be housed, and shall comply with any legal requirements regarding classification imposed thereby.

Prior to sending any CDCR Offender to the Facility, the CDCR shall provide to the Facility's Warden, without charge, copies of pertinent data from institutional files, commitment or other judicial orders, and medical records of each CDCR Offender to be housed at the Facility. In conjunction with the initial transfer of inmates from CDCR custody to CONTRACTOR, CONTRACTOR shall have the right to send

representatives, at CONTRACTOR's expense, to CDCR Headquarters for the purpose of conducting an on site review of the files of those inmates proposed by CDCR to be transferred to the CONTRACTOR. If a CDCR offender is rejected by the CONTRACTOR, the reason for the rejection shall be documented and provided to the CDCR. All CDCR Offender information shall be subject to statutory limitations on disclosure, including but not limited to State privacy laws, and provisions of the federal requirements imposed by the Health Insurance Portability and Accountability Act (HIPAA) or other Federal privacy laws. The CONTRACTOR shall release information only in accordance with CDCR direction.

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

3.02.4 The requirements for minimum normalized occupancy shall commence with the first placement of offenders at the facility of CONTRACTOR being occupied. CDCR reserves the right to occupy CONTRACTOR'S facilities in a manner, which best suits the availability of Offenders for such placement to CDCR. CDCR may occupy one, more than one, or all facilities at such time and in such manner as best meets their requirements. The requirements of normalized occupancy within 120 days shall only commence with the first placement of offenders with any particular facility. Provided however, in the event CDCR has not utilized beds in one or more of CONTRACTOR's facilities within 180 days from the first day a CDCR Offender is received at a CONTRACTOR Facility then beds at any such Facility shall be removed from the capacity used to calculate Minimum Normalized Occupancy. Prior to removal of said beds, the CDCR shall have the option to reserve those beds by agreeing to pay the Minimum Normalized Occupancy Rate per facility identified by CDCR as identified in this Agreement. Thereafter, in the event CDCR desires to use beds in any Facility so removed and beds are available in the Facility at such time, CDCR and CONTRACTOR may mutually agree to return these beds to the capacity used to calculate the Minimum Normalized Occupancy, subject to a reasonable phase-in period at such Facility.

### **Section 3.03 Transfer/Delivery of Offenders.**

The CONTRACTOR shall be responsible for the transporting of offenders to and from CDCR to the Facility. The parties agree to cooperate and coordinate their procedures regarding transport so as to minimize the expense associated with such transfers. All required offender local transportation to and from the Facility (e.g., for offsite medical care) shall also be provided and paid for by the CONTRACTOR. Upon the request of the CONTRACTOR and with prior written approval of the CDCR Contract Monitor, CONTRACTOR shall be entitled to transfer a CDCR Offender from one facility to another, provided the facility receiving the transferred CDCR Offender is operated by CONTRACTOR pursuant to an agreement between CDCR and CONTRACTOR or between CDCR and an entity with which CONTRACTOR has an operating contract.

**Section 3.04 Costs of Transport of Offenders.**

CDCR shall reimburse CONTRACTOR for the cost of transporting offenders between the transfer point in California and Facility, and between Facility and transfer point in California as follows:

- A. Cost of airframe and crew (“charter costs”) at actual cost. CONTRACTOR agrees to provide CDCR with the cost quote for any transfer and CDCR shall have 48 hours to approve or reject that quote. If CDCR rejects a quote, CDCR shall cooperate with CONTRACTOR to obtain a replacement service provider to provide the same service at a rate acceptable to CDCR. If a better quote cannot be obtained through these efforts, CDCR agrees to allow CONTRACTOR to utilize the initial provider.
- B. Costs of guarding to be reimbursed to CONTRACTOR at their cost of salary and fringe benefits for each guard accompanying the transportation of offenders. Salary and fringe is defined for this section as actual salary plus 26% of salary in addition thereto to cover the fringe benefits. In addition, CONTRACTOR shall be entitled administrative overhead on said amounts calculated for guarding at a rate of 15%. CONTRACTOR shall be reimbursed for mileage for ground transportation of offenders from the receiving State drop off point to the facility at the rate then in effect and used by the Internal Revenue Service for calculation of mileage.

**Section 3.05 Offender Funds.**

Funds of an individual CDCR Offender shall be provided to CONTRACTOR by CDCR within seven (7) working days of the CDCR Offender’s transfer. These funds shall be held and managed pursuant to policies, procedures and practices, which shall be provided to CONTRACTOR prior to inmate arrival.

**Section 3.06 Offender Work/Program Assignment Payment.**

CONTRACTOR shall pay inmate wages equal to the amount paid to other inmates housed at the particular Facility at the time of transfer. Provided, however, CDCR shall inform CONTRACTOR of the applicable pay scales utilized by CDCR, and inform CONTRACTOR of any changes occurring thereto during the term of this agreement. CONTRACTOR will review the CDCR pay scale to ensure that it is in keeping with the Facility pay scales currently in place. In the event of a discrepancy, CCA will make a recommendation to CDCR for a solution – recognizing the need to treat CDCR offenders housed out of state in a similar manner to CDCR offenders in state and taking into account CCA’s need for similar treatment for all jurisdictions in the facility.

**Section 3.07 Return of Offenders to the CDCR.**

3.07.1 Upon demand by the CDCR, offenders will be delivered to the custody of the CDCR pursuant to the terms as set forth in Section 3.03 of this Agreement.

3.07.2 Within 14 days of receiving a good faith request (based on the diagnosis of a serious medical condition, on-going or serious disciplinary reasons, or inability to provide a level of custody consistent with the safety and security of the inmate and/or staff), the CDCR will accept custody of any offender the CONTRACTOR requests be returned to CDCR custody.

3.07.3 No offender who completes his sentence, is released by court order, or is placed on probation or parole shall be released in a state, other than California, unless that State has a detainer on the offender or has accepted custody of the offender pursuant to an interstate compact. In every other case, prior to release from custody, offenders shall be returned to the CDCR or to the custody of such jurisdiction as has agreed to take the offender, pursuant to the terms as set forth in Section 3.03 of this Agreement.

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

3.07.5 When a CDCR Offender returns to CDCR, the CONTRACTOR shall provide a transfer summary of each CDCR Offender's program activities (work, education, etc.), infraction history, and other items deemed necessary by CDCR and/or the CONTRACTOR staff within ten (10) business days of the CDCR Offender's transfer.

#### Article IV

#### OPERATION OF FACILITY

**Section 4.01 General Duties.** The CDCR Offenders in the Facility shall be confined and supervised in accordance with the Operating Requirements. The CONTRACTOR shall maintain staffing levels at the Facility in accordance with ACA standards and in sufficient numbers and rank to maintain the safety of the public, staff and offenders and to adequately carry out the provisions of this Agreement. The CONTRACTOR shall provide CDCR with staffing guidelines for each facility where CDCR Offenders are housed prior to execution of this Agreement said minimum staffing patterns are attached hereto as Attachment A. In the event of any change to the staffing guidelines for the staff assigned to the particular CDCR housing units during the term of the Agreement, such revised guidelines shall be provided to CDCR in advance of any change and shall be subject to CDCR approval which shall not unreasonably withheld and which shall granted or withheld within ten business days of the request. In advance of any change, the CONTRACTOR will exercise authority to ensure that the daily operations of the Facility are in compliance with the provisions of this Agreement. Subject to the provisions of this Agreement, the CONTRACTOR shall provide CDCR Offenders care and treatment, including the furnishing of subsistence and routine and emergency medical care consistent with the requirements of ACA standards, NCCHC standards, CCR Title 15, and constitutionally appropriate guidelines, provide for their physical needs, make available work, education, training and treatment programs, retain them in safe, supervised custody, maintain proper discipline and control, make certain that any applicable court orders are complied with, provide reasonable access to the courts, and otherwise comply with all applicable law. The CONTRACTOR will provide reports to the CDCR Contract Monitor on the adjustment of CDCR Offenders consistent with CDCR reviews. Contractor shall provide case management of CDCR offenders consistent with Title 15 including classification, monitoring earned/good time, disciplinary activity, programming and other offender activity.

CDCR offenders shall be provided with a copy of the Facility rules and procedures (orientation guide) upon arrival. The orientation information must include the process for obtaining medical care,



disciplinary process, and the offender appeal/grievance process. A verbal orientation shall also be provided upon arrival.

**Section 4.02 Contract Monitors.**

4.02.1 In administering this Agreement, the CDCR shall designate a person, herein referred to as the CDCR Contract Monitor, to monitor the CONTRACTOR’s performance under this Agreement. If this provision is not completed at the time of contract execution, CDCR shall inform CONTRACTOR of the identity of said monitor, along with the information described below, prior to occupancy of the facility.

CDCR Contract Monitor	_____ Contract Monitor
Name:	Name:
Address:	Address:
City, State, Zip Code	City, State, Zip Code
Telephone Number:	Telephone Number:
Fax Number:	Fax Number:

4.02.2 The CONTRACTOR shall designate a person who shall act as the Facility’s contact person for purposes of the administration of this Agreement.

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

4.02.4 Unless otherwise provided, the CONTRACTOR shall permit the CDCR and any other duly authorized agent or governmental agency, to monitor all activities conducted by the CONTRACTOR pursuant to the terms of the Agreement. Specifically included in this provision is the right of the federally appointed receiver in the case of Plata v. Swarzenegger to monitor healthcare services within the institution. As CDCR or the Receiver may in their sole discretion deem necessary or appropriate, such monitoring may consist of internal procedures evaluation, examination of program data, special analysis, on-site checking, formal audit examinations or any other reasonable procedures. All such monitoring shall be performed in a manner that shall not unduly interfere with Agreement work.

**4.02.5 Healthcare Monitor**

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

**Section 4.03 Medical/Mental Health/Dental.**

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

- CDCR Offenders shall be provided health services consistent with the services provided by the CDCR under applicable CDCR Offender health services policies and procedures.

**Services** – All offender medical services shall be provided at the Facility when possible. For cases requiring emergency care or care that is medically necessary but outside the capability of the providers at the Facility, e.g. specialty physician or hospital-based services, existing arrangements with local health care providers shall be utilized to obtain the required services. At the inception of this contract, a listing of all existing contractual arrangements with local healthcare providers, including but not limited to acute care hospitals and clinics shall be made available to CDCR by CONTRACTOR. Any change to this list shall be communicated to CDCR.

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

- 24 hour care, seven days a week emergency medical, dental, and mental health care;
- initial health screening;
- health appraisal examination;
- daily triaging of complaints;
- sick call procedures with a health practitioner, including offering this service at least 5 days per week;
- outpatient medical, dental, and mental health service, including diagnostics and physical therapy;
- inpatient medical services;
- special medical programs and services for, but not limited to, offenders with chronic needs or requiring convalescent care;
- mental health and substance abuse services;

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Exhibit A

- adequate staffing of trained professional health services staff and support staff;
- pharmaceutical services and supplies;
- no cost to CDCR Offender for medication refills and renewals;
- optometric services;
- health education;
- medical diets;
- infection control; and
- quality control/peer reviews.

**Initial/Preliminary Screening** – All screening will be conducted by trained or qualified health care personnel on all offenders within 48 hours of the offender’s arrival at the Facility. Screening will include, but not limited to:

- an inquiry into the offender’s health care history, including status of current modalities and medications;
- an observation of the offender’s behavior, physical limitations and capabilities and current physical condition; and
- An immediate referral to appropriate health care professionals, for emergency care, prescription management, or modality authorization.

At initial screening, all offenders will receive orientation about the Health Services Unit, including the procedures for accessing care.

**Full Health Appraisal (Intake)** – During the initial occupancy phase of this contract all offenders will receive a full health appraisal within 30 days of arrival at the Facility. This health appraisal will include, but not limited to:

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

In the event CONTRACTOR’s staff are unable to provide the requisite screenings in the time allowed due to the volume of screenings to be conducted, CONTRACTOR may seek approval to extend the time for such screenings, consistent with the approval of CDCR and the Receiver, and if such extension of time is disallowed, may utilize outside contracted services to accomplish said screenings. CDCR shall be given

advance notification of the identity and qualifications of said individuals, and review the proposed rate of compensation to be paid to such persons. CDCR shall not unreasonably withhold its consent to such proposed screeners, and shall reimburse CONTRACTOR for their additional costs incurred in complying with this provision in such event.

**Dental Screening, Examination and Treatment** – The CONTRACTOR shall have written policies and procedures to assure dental screenings, exams, x-rays, and treatment are rendered consistent with the CDCR and ACA standards. The CDCR records sent to the facility will be reviewed for dental history and to identify current dental care that should be continued.

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

**Infectious Diseases** – The CONTRACTOR shall have written policies and procedures to support the management and prevent the spread of infectious diseases. A copy of said policies shall have been provided to CDCR prior to the execution of this agreement.

**Formulary** – The CONTRACTOR shall adhere to the Facility formulary. When the only medically appropriate and medically necessary pharmaceutical for an offender is not on the Facility formulary, the Facility Medical Director and/or the Health Services Administrator will follow the Facility's procedures for obtaining a waiver.

**Initial Provisioning Of Medications** – At the time of initial transfer, and at the time of any return of an offender to or from the facility, the CDCR or CONTRACTOR, depending on who is releasing custody at the time of transfer, shall provide at the time the offender is transferred between the custody of CDCR and CONTRACTOR, a fourteen (14) day supply of any medications prescribed for that offender.

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

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

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

responsibility of staff performance lies with the Facility Medical Director and/or the Health Services Administrator.

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

The Health Care Administrator/Manager shall maintain records of staff participation in facility orientation and annual training and mandatory Continuing and Professional Education requirements.

- 4.03.1 Costs – The cost of providing on-site medical, mental health or dental services through Facility staff or contracted services shall be considered normal costs incidental to the operation of the Facility and is included in the CDCR Offender per diem rates, except that the CDCR shall pay for:
- a) All expenses in excess of \$2,500 annually per inmate for medically necessary, off site hospital or emergency care. This includes, but is not limited to medical, surgical, mental health, and dental care delivered in an Emergency Room, practitioner’s office, or inpatient or outpatient hospital setting. Provided however, CONTRACTOR shall be responsible for the costs of any off-site medical care if such care should have been provided on-site through the CONTRACTOR’s provision of routine medical, dental and mental health services.
  - b) All HIV or AIDS related inpatient and outpatient medical costs and the costs of providing AZT or other medications therapeutically indicated and medically necessary (as defined in the UHR) for the treatment of offenders with HIV or AIDS. CONTRACTOR shall notify the CDCR of any offender diagnosed with HIV or AIDS within three (3) working days.
  - c) Any costs associated with DNA testing of offenders.

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

- 4.03.2 A co-pay in the amount of \$5.00 may be charged to CDCR Offenders for certain medical, dental and/or vision services requested / initiated by the offender in accordance with Title 15, Section 3354.2. The co-pay fee will be retained by the CONTRACTOR.
- 4.03.3 The CDCR shall not be responsible for the payment of elective or experimental medical procedures or for medical care required as a result of negligence or intentional misconduct on the part of the CONTRACTOR, its employees, or subcontractors or for care which could have foreseeably been prevented.
- 4.03.4 Medical billings from outside vendors which are the responsibility of CDCR shall be submitted to CDCR within thirty (30) days of receipt.

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

4.03.6 \_ The parties hereto expressly acknowledge and agree that:

- a) the inmates to be transferred pursuant to this Agreement to the facilities owned and/or operated by CONTRACTOR (the "Transferee Facilities") are members of a class of plaintiffs in an action pending in the United States District Court for the Northern District of California entitled, Marciano Plata et al. v. Schwarzenegger et al. No. C01-1351 TEH (the "Plata Action");
- b) the California Department of Corrections and Rehabilitation (the "CDCR") is a named defendant in the Plata Action;
- c) the plaintiffs in the Plata Action have alleged that the health care delivered to inmates in the California prison system is constitutionally inadequate and violates their rights guaranteed by the Eighth and Fourteenth Amendments to the U.S. Constitution;
- d) by order, dated February 14, 2006 (the "February 14 Order"), the Court in the Plata Action (the "Plata Court") appointed Robert Sillen as the Receiver (the "Receiver") for the California prison health care system and set forth in detail the duties and responsibilities of the Receiver;
- e) pursuant to the February 14 Order, the CDCR and "all persons in concert or participation" with the CDCR are required to cooperate fully with the Receiver in the discharge of his duties;
- f) the inmate-class members transferred pursuant to this Agreement are entitled to receive constitutionally adequate health care while housed in the Transferee Facilities and shall not, by reason of the transfers, lose their status as members of the plaintiff class in the Plata Action; and,
- g) the transfers of inmates contemplated by this Agreement are not designed or intended to thwart, delay or interfere with the Plata Court's orders or with the Receiver's exercise of his duties pursuant to the February 14 Order.

CONTRACTOR expressly acknowledges and agrees that it:

- a) intends to and will provide constitutionally adequate health care to the inmate-class members while they are housed in the Transferee Facilities;

- b) is a “person in concert and participation with” the CDCR within the meaning of, and subject to, paragraph VI.A. of the February 14 Order, and has been provided with a copy of the February 14 Order; and
- c) will cooperate fully with the Receiver and will provide the Receiver access to the Transferee Facilities and to documents, personnel and inmate-class members in the Transferee Facilities to the same extent as the Receiver is provided access to CDCR facilities, personnel and prisoners pursuant to paragraph II.E. of the February 14 Order provided, however, the Receiver’s access to documents and personnel pursuant to this Section shall relate only to such documents and personnel as are directly related to the delivery of medical care to California inmates in the Transferee Facilities and shall not include information related to other jurisdiction’s inmates or facility information unrelated to the provision of medical care to California inmates.

4.03.6 The parties hereto acknowledge and expressly agree that with respect to the provisions of section 4.03 and all subsections of said section, the Receiver is a third party beneficiary of this Agreement and hereby consent to the jurisdiction of the United States District Court for the Northern District of California with respect to any action or proceeding brought by the Receiver to enforce the provisions of such sections.

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

#### **Section 4.04 Death of an Offender**

- 4.04.1 In the event of the death of a CDCR Offender, the CONTRACTOR will immediately notify the CDCR Contract Monitor via telephone and shall have the cause and circumstances of the death reviewed by the coroner of the local jurisdiction. If requested by CDCR, the CONTRACTOR shall obtain an independent autopsy. This autopsy shall be paid for by the

CDCR. A certified copy of the death certificate and the offender's file and medical records will be forwarded to the CDCR.

- 4.04.2 The CONTRACTOR shall furnish all information requested by the CDCR, and follow the instructions of the CDCR with regard to disposition of the body. The CDCR will notify the relatives of the deceased offender, if any, as soon as practicable after death.
- 4.04.3 All expenses relative to any necessary preparation and shipment of the body shall be the responsibility of the CDCR.

**Section 4.05 Offender Work and Programs.**

- 4.05.1 All eligible offenders shall be afforded the opportunity to participate in programs, occupational training, and work at the Facility. Ineligible offenders are those who are ill, unable to work due to age or handicap, and those in administrative or disciplinary lockdown. No CDCR Offender shall participate in any program, training or work outside the fenced Facility unless approved in writing by the CDCR Contract Monitor or designee.
- 4.05.2 Eligible offenders will be productively occupied for at least 30 hours per week in work, education, vocational, and/or major habilitation programs in accordance with the Offender Program Participation Table attached hereto as Attachment **XXX**
- 4.05.3 Programs shall include: Educational programs (basic literacy, adult basic education, general educational development, ESL (English as a second language); recreational programs; cognitive behavioral programs; self-help programs (AA/NA); and vocational/technical programs, as available.
- 4.05.4 Offenders shall be required to work or participate in educational or vocational programs, when ordered to do so by the CONTRACTOR. However, offenders shall not be allowed or required to participate in any training or work contrary to the laws of California.
- 4.05.5 The CONTRACTOR may dispose of or consume all products produced by any offender participating in work or vocational programs. The CONTRACTOR will bear all costs and retain all proceeds there from. .
- 4.05.6 The CONTRACTOR shall daily record the actual hours worked/participated for each offender (those in work/programs/education/training) on the Work Supervisor's Time Log (CDC Form 1697) in order that work credit can be calculated by CDCR in accordance with Title 15 (§3045). The forms shall be provided at CDCR expense. The completed forms (white copy) shall be collected and mailed to the Contract Monitor by the 15<sup>th</sup> of the following month.
- 4.05.7 In case of craft programs, the crafts may be sold and proceeds of any sale retained by the offender.



**Section 4.06 Religious Opportunity.**

The CONTRACTOR will provide adequate space and opportunity for religious programs on a daily basis except for offenders in lockdown status in accordance with Title 15 (§3210-3213).

**Section 4.07 Recreation and Canteen - Barber.**

Offenders shall be provided indoor and outdoor recreational opportunities on a daily basis except for offenders in lockdown status. Offenders will be provided with commissary service in accordance with established CDCR policies. Any profits from the commissary operation shall be deposited in the Offender Welfare Fund, to be administered in accordance with and in a manner consistent with established CDCR policies.

- 4.07.1 The CONTRACTOR shall enforce all hair grooming standards as established by CDCR policy (Title 15, chapter 1, Article 5). The CONTRACTOR shall also establish and maintain a plan of operation for on-site inmate barber services. Barber service procedures must provide for the safety, security and maintenance of the designated area, tools, solutions, equipment and comply with all applicable health and sanitation codes. The number of inmate barber assignments shall be consistent with the need to readily service the inmate population. The CONTRACTOR should strive to maintain an ethnically diverse barbers service in both inmates assigned and services provided. The CONTRACTOR shall ensure that barber services are directly available and accessible to the inmate population. Hours of operation must therefore be scheduled in correlation to other facility programs, activities and other inmate assignments.

The barber service shall comply with acceptable and applicable codes, practices, standards and requirements established by the appropriate state regulatory agency in the state where the Facility is located and ACA standards. The CONTRACTOR shall be responsible for developing a plan of operation for inmate barber services that, at a minimum, must: (a) ensure that tools are properly inventoried, maintained and accounted for at all times; (b) provide for trained inmate barbers that are hired consistent with Facility policy and ACA standards; and (c) ensure that inmate barbers and services are provided to serve an ethnically diverse inmate population

The CONTRACTOR shall provide a designated barber area, centrally located within the facility and adjacent to the inmate population, that is readily accessible to all inmates for the personal maintenance of hair grooming standards in accordance with CDCR requirements. The CONTRACTOR may also provide multiple designated inmate barber areas equitably located within various areas of the facility to achieve the same purpose within the framework of safety and security. In either case, the barber area(s) shall be centrally located and of sufficient size and dimensions to adequately service the entire inmate population. Clear lines of sight shall be provided from designated staff/posts. The CONTRACTOR shall ensure that CDCR principles of proper tool control is incorporated and adhered to by inmates and staff alike. At a minimum, the barber area shall be equipped with a sink, power outlets and a chair.

**Section 4.08 Telephone.**

Access to telephone service shall be provided to CDCR Offenders in accordance with Title 15 (§ 3018, 3044, 3045). CONTRACTOR agrees that any revenues generated by the inmate telephone system (Inmate Telephone Revenue Funds) shall be segregated and held in a fund used to purchase, install and offset operating costs of a telephone videoconferencing system, as shall be acceptable to CDCR for use by CDCR and the inmates as CDCR may direct. Once the expense of purchase and installation have been paid, CONTRACTOR may retain 10% of all future payments as and for administrative and overhead costs associated in operating the Videoconferencing system. The balance of the funds shall be utilized to defray the operating costs of said system and reduce the operating costs associated therewith to the inmates and CDCR.

**Section 4.09 Clothing.**

The CONTRACTOR will be responsible for laundry, repair, and replacement of offender clothing during the CDCR Offender's incarceration at the Facility to ensure clean clothes and bedding on a weekly basis. Upon admission, a minimum of three (3) sets of clean Facility uniforms and three(3) sets of undergarments and socks, clean bedding (to include sheets, blanket(s), pillow and pillow case and mattress), climate appropriate outer wear (jackets, etc.) and deck shoes or other appropriate footwear shall be provided CDCR Offenders, if needed. In addition, offenders shall receive footwear appropriate to their work assignment. Tennis shoes shall be made available for purchase in the commissary. CONTRACTOR shall provide laundry services to the offender at no charge to the offender in accordance with established CDCR policies.

**Section 4.10 Meals.**

The CONTRACTOR will provide all CDCR Offenders with nutritional meals consistent with established CDCR policies. A Registered Dietician or Nutritionist shall approve all menus, and meals shall be prepared in compliance with the approved menus. Menus shall be submitted to the Contract Monitor for approval on a monthly basis.

**Section 4.11 Mail.**

Offenders will be provided with mail service. Indigent Offenders shall be provided with supplies for correspondence for up to the price of twenty (20) one ounce first class letters per month. However, no request for mailing of verified legal pleading will be denied under this provision regardless of postage limit or financial status of the offender. The CONTRACTOR is entitled to recoup postage fees when the Offender has sufficient funds in his account.

**Section 4.12 Visitation.**

The CONTRACTOR shall provide space, opportunity, furniture, and equipment for visitation. Contact visitation shall be provided unless individual security concerns dictate otherwise. The CONTRACTOR shall adopt flexible visiting policies for visitors traveling from out of state. Visitors on CDCR's approved visitors list shall be approved by the CONTRACTOR unless security concerns indicate otherwise. Minimum hours of visitation shall be consistent with CDCR regulations. CONTRACTOR shall provide

video conference visitation services at the Facility upon the request of CDCR, and at CONTRACTOR'S expense (see Section 4.08 above). If space is available at the Facility and at the request of CDCR, CONTRACTOR shall provide space appropriate for conjugal visits. The provisioning of said space shall be the expense and obligation of CONTRACTOR.

#### **Section 4.13 Offender Property.**

CDCR Offenders shall be allowed to possess personal property as outlined in Title 15. Exclusions may be granted based on facility security requirements. CONTRACTOR shall provide the CDCR allowable property lists prior to the implementation of this agreement.

#### **Section 4.14 Offender Appeals.**

The CONTRACTOR will handle all CDCR Offender appeals/grievances related to Facility issues consistent with Facility policy and procedures (**with CDCR approval**). CDCR Offenders shall file appeals to CDCR for non-facility related issues and medical claims. CDCR shall retain final authority on all issues of appeal. A monthly summary of appeals by volume and type will be provided to the CDCR Contract Monitor

#### **Section 4.15 Access to Courts.**

The CONTRACTOR will ensure all CDCR Offender court related access is in compliance and consistent with the provisions of Department Operations Manual and California Code of Regulations, Title 15. The CONTRACTOR will provide opportunity for meaningful access to federal and California State legal materials at the Facility in accordance with security and operating needs. Every attempt should be made by the CONTRACTOR to provide CDCR Offenders in segregation and protective custody access to the law library collection established pursuant to this section providing their participation is consistent with the safety and security of the Facility. If direct access cannot be provided CDCR Offenders in segregation or protective custody, a process shall be established allowing CDCR Offenders in segregation or protective custody to request reasonable numbers of materials from a law library. The CONTRACTOR shall provide CDCR legal materials required to meet constitutional standards via computer and appropriate software including California specific material. The CONTRACTOR shall provide a secure and monitored location to house said computer and associated peripherals. The CONTRACTOR shall provide federal law material; typewriters, including ribbons, and typing paper; notary services; copying services, including copier paper; legal size envelopes; sufficient to meet constitutional standards. Items such as paper and typewriters shall be provided and shall be available free of charge to indigent CDCR Offenders. CDCR Offenders need not be afforded access to copiers; however, the CONTRACTOR shall provide a copy of specific information, such as a page from a law book, upon request by a CDCR Offender. A common copy fee shall be set by the CONTRACTOR. The CONTRACTOR shall provide access to law material when staff has scheduled absences, due to vacations, extended leave or training.

#### **Section 4.16 Offender Records and Progress Reports.**

- 4.16.1 The CONTRACTOR will handle all CDCR Offender Records and insure compliance consistent with the provisions of DOM and Title 15. Offender institutional records regarding CDCR Offenders while at the Facility shall be collected and maintained on-site by the CONTRACTOR in accordance with CDCR record keeping practices and operating

requirements governing confidentiality. Upon request, all records, reports, and documents related to CDCR Offenders, including employee records, shall be made available immediately to the CDCR Contract Monitor for review. When an offender is transferred from the Facility, the record provided by the CDCR and additional information compiled while the CDCR Offender was at the Facility will be forwarded to the CDCR. The record consists of reports, timesheets, staff memos, correspondence, and other documentation relating to behavior of the CDCR Offender.

4.16.2 The CONTRACTOR shall define a local level of case planning, subject to CDCR review and approval. Case planning information will be included in each CDCR Offender's progress report prepared by the CONTRACTOR and submitted to CDCR once per year as designated by the CDCR Contract Monitor. The progress report shall include narrative sections describing the following subjects: programming; serious infraction record; medical; mental health; community support; counselor comments; recommended custody and placement changes; and offender comments. A copy shall be provided to the CDCR Offender. CDCR Offender's appeals of the counselor comments/recommendations in the progress report shall be appealed to the CDCR.

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

#### **Section 4.17 Transportation & Security.**

The CONTRACTOR will provide security for Offenders assigned to the Facility whether in the Facility or elsewhere. The CONTRACTOR will provide transportation (transportation security procedures/staffing levels to be provided by CONTRACTOR prior to signing this agreement) to and from medical appointments, emergency medical care, and state and federal court appearances within a 150 mile radius of the Facility at CONTRACTOR's cost.

#### **Section 4.18 Removal of Offenders from the Facility.**

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

#### **Section 4.19 Use of Force.**

The CONTRACTOR's use of force policy and training program for security staff shall be approved by the CDCR prior to offenders being transferred to the Facility and consistent with the CDCR Use of Force Policy as well as any other applicable use of force law applicable to the Facility or its operations. Following any use of force involving injuries, an incident report shall be prepared and the CDCR staff shall be notified pursuant to Section 4.21 "Notification of Incidents, Emergencies, and Escapes."

#### **Section 4.20 Escapes.**

In the event of an escape by a CDCR Offender(s) from the Facility's physical custody, the CONTRACTOR shall, in addition to efforts to apprehend such CDCR Offender, immediately notify the CDCR Administrative Officer of the Day, CDCR I.D./Warrants Unit, and the local law enforcement agencies as required by state statute in the same manner it uses for any other Facility escapees.

**Section 4.21 Notification of Offender Incidents, Emergencies, Escapes, and Discipline.**

- 4.21.1 The CONTRACTOR will handle all CDCR Offender related incidents, emergencies, and escapes in compliance with the provisions of DOM and Title 15. Incidents involving/impacting CDCR Offenders are to be reported using the established CDCR-approved reporting format. Such incidents are to be reported to the CDCR Contract Monitor within 24-hours of the occurrence. The CONTRACTOR and CDCR will provide each other with a list of names, phone numbers, and fax numbers for personnel to whom inquiries regarding fiscal, medical, and operations matters should be directed. For incidents involving any offender, the CONTRACTOR will send to the CDCR Contract Monitor reports on the incident on a timely basis.
- 4.21.2 The CONTRACTOR will handle all CDCR Offender disciplinary related matters according to the applicable provisions of DOM and CCR Title 15. CDCR will provide training regarding their policies and procedures to CONTRACTOR's personnel at CDCR Headquarters in Sacramento, California, as CONTRACTOR may request. CONTRACTOR shall be responsible for all expenses associated with the transporting of CONTRACTOR's employees to Sacramento for such training. CDCR shall not charge CONTRACTOR for such training, nor be at any expense in providing such training to CONTRACTOR's employees.
- 4.21.3 The CONTRACTOR will notify the CDCR identification and warrants section immediately (24 hours a day) by telephone for any:
- a) Offender escape;
  - b) Use of deadly force;
  - c) Use of force in which there is an injury requiring medical treatment;
  - d) Assault, including sexual assault, by an employee, offender, or civilian;
  - e) Disturbance involving three or more offenders which is not brought under control within 15 minutes;
  - f) Death of an offender;
  - g) Rape of an offender;
  - h) Property destruction rendering a living unit or support service area unusable;
  - i) Hostage situation;
  - j) Use of chemical agents.

All other incident reports, medical pre-authorizations, notices of emergency, medical treatments, and removal of Offenders from the facility shall be faxed to the CDCR Contract Monitor within 24 hours of the incident. The CONTRACTOR shall inform the CDCR of all significant incidents involving CDCR Offenders assigned to the Facility within 24 hours of occurrence. Significant Incidents include serious infractions, offender deaths, and all non-routine offender movement from the Facility, including emergency medical moves and removals from population to a Facility deemed appropriate and operated by the CONTRACTOR, and other such moves. Incidents described in this section shall be reported to appropriate CDCR staff as described CDCR.

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

4.21.5 The CONTRACTOR will provide a quarterly report to the CDCR Contract Monitor that chronicles/summarizes significant activities occurring during the quarter, and will be in the following format:

**Cover**

The standard cover shall identify the Facility, name/rank or title and telephone number of reporting staff member.

**Section 1: Institution Specific Issues**

This section will reflect issues related to individual Facility intelligence and investigation activities, and contain the findings of a trend analysis for the following items:

1. Rule infractions;
2. Results of significant contraband recoveries, such as the number and type of weapons found, narcotics, etc.;
3. Urinalysis screening;
4. Requests for protective custody;
5. Offender store orders, e.g. stockpiling;
6. Lockdowns for cause;
7. Visiting program contraband recoveries;
8. Offender/staff confrontations, including threats against staff;
9. Incidents and type of offender violence;
10. Offender deaths; and
11. Staff turnover by type.

**Section 2: Outside Referrals**

This section will report each inter-departmental intelligence or investigative contact, as well as referrals to outside law enforcement agencies. It will also designate the status of the referral, i.e., investigation being conducted, referral to prosecutor, no prosecution decision, etc. These cases need to ensure confidentiality of disclosure consistent with CDCR policy.

**Section 3: Substance Abuse Activity**

This section will provide a general statement concerning drug activity, and a report of substance abuse testing data within the Facility. It will also include information on the types of narcotics found, and strategies for dealing with these activities.

**Section 4: Analytical Paragraph**

This section will represent an analysis of the information that has been gathered, i.e., any findings related to the analysis of investigative reports and conclusions drawn from the analysis of problems pertaining to:

- Physical plant, to include grounds and work areas;
- Operating procedures and post orders; and
- Recommendations for corrective action which should be taken in order to correct the problems, if any, listed above.

4.21.6 The CONTRACTOR shall furnish copies of any regularly generated reports that are requested by the CDCR except for those reports which contain confidential financial or company proprietary information unrelated to CDCR Offender case, custody or housing.

**Section 4.22 Earned Time/Good Time.**

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

**Section 4.23 Sentence Computation.**

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

**Section 4.24 Classification.**

The CONTRACTOR will handle all CDCR Offender classification and ensure compliance consistent with the applicable provisions of DOM and Title 15. Any offender may be administratively transferred to a higher security level pending approval by the CDCR. No offender may be transferred to a lower security level without prior approval of CDCR.

**Section 4.25 Facility Space for Hearings, Inspections, Audits, and Contract/Healthcare Monitors.**

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

4.25.2 Unless required more frequently by law, standard and/or corporate/local policy, the CONTRACTOR will complete documented formal inspections of the following areas, according to stipulated schedule:

Security	per shift
Sanitation	monthly
Fire/Safety	quarterly
Environmental Health	annually

Copy of the inspection reports will be submitted to the CDCR Contract Monitor in a format provided by CDCR, to include action taken to correct noted deficiencies.

4.25.3 The Facility will complete audits in accordance with CCA policy and ACA standards.

**Section 4.26 Public Information.**

The CONTRACTOR will process all CDCR Offender publicity issues or requests for information consistent with the applicable provisions of DOM and Title 15. CONTRACTOR shall not be authorized to release publicity concerning CDCR Offenders. They shall not release personal histories or photographs of CDCR Offenders or information concerning their arrivals or departures, except as provided herein. All requests shall be forwarded to the CDCR Office of Communications (see Section 2.05).

**Section 4.27 Inspections.**

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

**Section 4.28 Offender Account Deductions (Restitution) Collection and Accounting.**

CONTRACTOR shall be responsible for collecting restitution from the wages and account deposits of inmates who owe restitution, pursuant to Penal Code § 2085.5, as further detailed in Regulations Title 15 Section 3097.

As of the date of this contract, that amount is 40%, plus 10% administrative fee, for a total of 44% of the inmate's wages and deposits. Said amount is currently scheduled to increase to the statutory maximum of 55% on January 1, 2007, pursuant to the above Regulations.

By entering into this agreement, CONTRACTOR acknowledges that CONTRACTOR is responsible for satisfying CDCR's restitution obligations under such regulations as they currently exist and as they may be amended in the future.

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

CONTRACTOR shall hold such funds in an interest-bearing account in trust for State for the purposes set forth in said statute and regulations, and shall not commingle such funds with CONTRACTOR's own funds or with any other funds. The CONTRACTOR shall also ensure that the restitution collections and administrative fees are not commingled and are submitted to the Department separately (by separate checks). Note – fines and direct orders may have the same case number but must be accounted for separately.

CONTRACTOR shall at all times keep an accurate and up-to-date accounting of all such funds and restitution information, and shall remit the inmate fund collections and associated inmate case information to CDCR as directed. By the 10th of each month following collections, CONTRACTOR shall forward the amount of restitution and administrative fees to Inmate Trust Control Accounting Unit, P.O. Box 1046, Folsom, CA 95763-1046. The remittance shall include an itemized statement which includes the



CDCR number, inmate name, case number, sentencing date, sentencing county, designation of fine or direct order, original fine/order amount, amount of restitution collected, date(s) of deductions, amount of administrative fees collected and balance still owing. The remittance must be subtotaled by restitution fines and direct order amounts. In addition, CONTRACTOR shall timely provide an accounting of all such funds to CDCR at any time upon request.

Any such restitution funds remaining in CONTRACTOR's possession at the end of the contract shall be remitted to the State for proper disposition pursuant to said Statute and regulations.

CDCR is midway to completion of a new accounting system that will replace and centralize all restitution, accounting, and canteen records into a single database and system at CDCR headquarters. This system, called the CDCR Restitution, Accounting, and Canteen System (RACS) is currently scheduled to be completed in 2008, although CDCR can not provide a guaranteed completion date due to factors outside of CDCR's control.

Upon completion of the RACS system, the CONTRACTOR shall receive and transmit the restitution collection data through an electronic interface with CDCR. The design, testing, and documentation of the CONTRACTOR's interface shall be subject to CDCR's approval and must be utilized and supported without additional cost to CDCR.

#### **Section 4.29 Policy and/or Procedure Changes.**

The CONTRACTOR will process all policy and procedural changes consistent with the applicable provisions of DOM and Title 15.

#### **Section 4.30 Quality Assurance and Initial Security Audit.**

The CONTRACTOR shall perform customary and usual Quality Control Audits of the facility and provide those audits to CDCR not less than quarterly. At the request of CDCR, CONTRACTOR agrees to include in those audits, such items for review (in addition to those reviewed in the previous audit,) such items as CDCR may reasonably request.

#### **Section 4.31 Tobacco – Prohibitions**

Consistent with Title 15, no CDCR offender will be allowed to use, possess, or purchase any tobacco products. Nor shall they be subject to second hand smoke from staff or offenders from other jurisdictions who may be housed in the Facility.

### **Article V**

#### **FACILITY EMPLOYEES**

#### **Section 5.01 Independent CONTRACTOR.**

The CONTRACTOR and its employees are associated with CDCR only for the purposes and to the extent set forth in this Agreement. With respect to the performance of the services set out herein, the CONTRACTOR is and shall be an independent CONTRACTOR and, subject to the terms of this

Agreement, shall have the sole right to manage the operations of the Facility. The CONTRACTOR shall perform its duties hereunder as an independent CONTRACTOR and not as an employee. Neither the Facility nor any agent or employee of the CONTRACTOR has the authority, actual or implied, to bind, incur liability, or act on behalf of CDCR or the State. Neither the CONTRACTOR nor any agent or employee of the CONTRACTOR shall accrue leave, retirement, insurance, bonding or any other benefit afforded to the employees of California as a result of this Agreement.

**Section 5.02 Personnel.**

Personnel shall be retained to deliver Twenty-four (24) hour care and supervision to incarcerated individuals, as well as administrative and support service personnel for the overall operation of the Facility, in accordance with CONTRACTOR operating requirements. All personnel shall be hired in accordance with CONTRACTOR personnel policies and procedures.

**Section 5.03 Training.**

All personnel shall be trained in accordance with CONTRACTOR personnel policies and procedures. If desired, CDCR agrees to provide such training to CONTRACTOR's personnel on CDCR's policies and procedures as CONTRACTOR may reasonably request. Said training shall be conducted at CDCR Headquarters in Sacramento, unless CDCR agrees otherwise. Costs associated with said training shall be borne by CONTRACTOR. CDCR shall make no charge for such training, and shall bear no expense in connection therewith.

**Section 5.04 Worker's Compensation**

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

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

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

**Section 5.05 CDCR Non-Liability for Injuries Caused by Inmates.**

Neither the State nor any State employee will be liable to the CONTRACTOR or its staff for injuries inflicted by inmates or parolees of the State. The State agrees to disclose to the CONTRACTOR any statement(s) known to State staff 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.

**Article VI****COMPENSATION AND ADJUSTMENTS****Section 6.01 Compensable Offenders.**

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

**Section 6.02 Payment.**

- 6.02.1 During the Initial Phase-In Period, CDCR shall pay directly to CONTRACTOR a per offender per day (per diem) rate of \$63.00 for each CDCR Offender housed at the Facility.
- 6.02.2 Following the Initial Phase-In Period and for the remainder of the initial three-year term of this Agreement, CDCR shall pay directly to CONTRACTOR a per diem rate of \$63.00 for each CDCR Offender housed at the Facility, based upon the average daily population per month, with a minimum monthly payment equal to the per diem rate times the guaranteed Minimum Normalized Occupancy times the number of days in the billing month.
- 6.02.3 Reimbursable Expenses as set forth in Sections 3.03, 3.04, 4.03.1 and 4.03.3 of this Agreement or such other sections as may set forth a CDCR cost reimbursement obligation.

**Section 6.03 Change in Scope of Services.**

The parties recognize that they have entered into this Agreement based upon currently existing operating requirements. Should a change in any of these requirements occur which necessitates a change in the scope of services and/or necessitates additional services so as to increase or decrease the cost of operating or performing other services as contemplated by this Agreement, either party may present documentation to support an increase or decrease to the per diem rate. Thereafter, the parties will use their best efforts to arrive at a mutually accepted increase or decrease in the per diem rate. Specifically it is understood that CDCR may require additional medical and healthcare staffing above that as shown in the staffing information provided by CONTRACTOR (Said staffing information is attached hereto as Attachment A, and is incorporated into this agreement by reference and specifically made a part hereof). In said event

CDCR agrees to bear the actual cost incurred by CONTRACTOR in providing those additional medical and healthcare services.

**Section 6.04 Billings.**

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

**Section 6.05 Taxes/Utilities.**

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

**Article VII**

**LEGAL PROCEEDINGS, INDEMNIFICATION & INSURANCE**

**Section 7.01 Indemnification.**

The CONTRACTOR hereby assumes entire responsibility and liability for any and all damages or injury of any kind or nature whatever (including death resulting there from) to all persons, whether employees of the CONTRACTOR or otherwise, and to all property caused by, resulting from, arising out of or occurring in connection with any action of the CONTRACTOR (including its officers, directors, employees, subcontractors, or agents) in performance of the duties of this Agreement. If any claims for such damage or injury (including death resulting there from) be made or asserted, whether or not such claims are based upon the CONTRACTOR'S (including its officers, directors, employees, subcontractors, or agents) active or passive negligence or participation in the wrong or upon any alleged breach of any statutory duty or obligation on the part of the above parties, the CONTRACTOR agrees to indemnify, defend and hold harmless, the State and CDCR, their officers, agents, servants and employees, and the Receiver appointed in the Federal case of Plata v. Swarzenegger, from and against any and all such claims, and further from and against any and all loss, cost, expense, liability, damage or injury, including legal fees and disbursements, that the State and CDCR, their officers, agents, servants or employees may directly or indirectly sustain, suffer, or incur as a result, and the CONTRACTOR agrees to and does hereby assume, on behalf of the State and CDCR, their officers, agents, servants and employees, the defense of any action at law or in equity which may be brought against the State, CDCR or their contractors (if any), their officers, agents, servants or employees, arising by reason of such claims and to pay on behalf of the State and CDCR, their officers, agents, servants and employees, upon demand of either of them, the amount of any judgment that may be entered against them, individually, jointly or severally, their officers, agents, servants or employees in any such action.

As part of the CONTRACTOR'S assumption of all responsibility and liability for any and all damage or injury as detailed above, the CONTRACTOR further agrees to hold harmless, defend and indemnify the State and CDCR for any loss, expense, recovery or settlement, including counsel fees and costs of defense, which arise from any demand, claim (whether frivolous or not) or suit which may be asserted or

brought against the State, CDCR or the CONTRACTOR as a result of any injury or damage to any person or persons (including death) or property (i) allegedly caused by, resulting from, arising out of, or occurring in connection with the furnishing of any goods, equipment or services or the performance or preparation for performance of any of the work or any duties of the CONTRACTOR hereunder, or incidental or pertaining thereto, and (ii) whether or not such injury or damage is due to or chargeable to the site owner or any contractor or subcontractor under a contract for which the goods or services herein ordered are required, including, but not limited to, any claim based on liability without fault for injury caused by defective goods supplied by the CONTRACTOR. The CONTRACTOR also agrees to assume responsibility for, hold harmless, defend and indemnify the State and CDCR for payment of any expenses, costs (including delay costs), direct and consequential damages, penalties, taxes or assessments (including punitive damages), including counsel fees and costs of defense, which may be imposed or incurred (a) under any Federal, State, or local law, ordinance or regulation upon or with respect to any compensation of any person employed by the CONTRACTOR, and (b) under any Federal, State, or local law, ordinance or regulation upon or with respect to discrimination in employment against any individual employed by the CONTRACTOR on the basis of race, color, religion, sex, or national origin, and (c) under any Federal, State, or local law, ordinance or regulation upon or with respect to any compensation of any person for claims or civil actions alleging deprivation of right, privilege or immunity secured by the United States Constitution and laws pursuant to 42 USC Section 1983 or similar statutes as well as claims for attorneys fees brought pursuant to 42 USC Section 1988 or similar statutes.

**Section 7.02 Legal Proceedings.**

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

**Section 7.03 Insurance.**

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

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

The CONTRACTOR shall obtain and/or provide proof of professional liability insurance coverage, including medical malpractice liability and errors and omissions coverage, to cover all professional

services to be provided by the CONTRACTOR to the State under this Contract. The amount of coverage obtained shall be two million dollars (\$2,000,000) per occurrence with a five million dollar (\$5,000,000) yearly aggregate. If occurrence coverage is not available, claims-made coverage with a three (3) year tail coverage shall be provided for the same amounts and aggregate as detailed above.

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

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

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

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

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

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

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

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

#### **Section 7.04 Certificate of Insurance and Cancellation.**

During the performance of the management services hereunder, the CONTRACTOR shall maintain the plan of insurance and submit a Certificate of Insurance to CDCR for the mutual protection and benefit of it and CDCR, naming CDCR as co-insured and entitled to all notices issued under the policy, to

cover claims that may arise out of or result from the CONTRACTOR'S operation and management services hereunder, whether same be by the CONTRACTOR or a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. CDCR shall be notified at least thirty (30) days in advance of cancellation, non-renewal or adverse change in the coverage. New Certificates of Insurance are to be provided to CDCR at least fifteen (15) days after receipt by CONTRACTOR.

**Section 7.05 Defense/Immunity.**

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

**Section 7.06 Notice of Claims.**

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

**Section 7.07 Prior Occurrences.**

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

**Section 7.08 Waiver.**

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

**Section 7.09 Risk of Physical Damage to Facility.**

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

**Article VIII.****DEFAULT AND TERMINATION****Section 8.01 CDCR Default.**

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

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

**Section 8.02 CONTRACTOR Default.**

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

- 8.02.1** The failure to keep, observe, perform, meet or comply with any covenant, agreement, term, or provision of this Agreement to be kept, observed, met, performed, or complied with by CONTRACTOR hereunder, which such failure continues for a period of thirty (30) days after CONTRACTOR has received a written notice of deficiency from the Contract Monitor.
- 8.02.2** The failure of CONTRACTOR to meet or comply with any applicable federal or state requirement or law, which such failure continues for a period of thirty (30) days after CONTRACTOR has received a written notice of deficiency from the Contract Monitor.
- 8.02.3** The failure of CONTRACTOR to comply with any applicable CDCR policy for which CONTRACTOR has not received a prior written waiver from CDCR, when such failure continues for a period of thirty (30) days after CONTRACTOR has received a written notice of deficiency from the Contract Monitor. Provided however, the Contract Monitor shall not unilaterally provide written notices of deficiency regarding any areas where there is a conflict between Governing Standards, pursuant to Section 9.29 and until the CONTRACTOR and CDCR have had an opportunity to mutually agree upon the appropriate Governing Standard pursuant to Section 9.29.
- 8.02.4** If CONTRACTOR (a) admits in writing its inability to pay its debts; (b) makes a general assignment for the benefit of creditors; (c) suffers a decree or order appointing a receiver or trustee for it or substantially all of its property to be entered and, if entered without its consent, not to be stayed or discharged within sixty (60) days; (d) suffers a proceedings under any law relating to bankruptcy, insolvency, or the reorganization or relief of debtors to be instituted by or against it and if contested by it, not to be dismissed or stayed within sixty (60) days; or (e) suffers any



judgment, writ of attachment or execution, or any similar process to be issued or levied against a substantial part of its property.

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

**Section 8.03 Notice of Breach.**

No breach of this Agreement by either party shall constitute an Event of Default and no action with regard to same may be instituted unless and until the party asserting a breach specifies that a deficiency or deficiencies exist(s) that, unless corrected or timely cured, will constitute a material breach of this Agreement on the part of the party against which a breach is asserted. Nothing in this section is intended to prevent any party from terminating this Agreement pursuant to Section 2.03 of this Agreement.

**Section 8.04 Time to Cure.**

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

**Section 8.05 Remedy for Default.**

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

**Section 8.06 Waiver.**

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

**Section 8.07 Termination for Immediate Threat**

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

**Article IX**

**MISCELLANEOUS**

**Section 9.01 Consolidation**

CONTRACTOR and CDCR shall work in good faith to consolidate the CDCR population into one location as additional bed capacity becomes available in CONTRACTOR’s system.

**Section 9.02 Integration.**

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

**Section 9.03 Disputes Contract or Billing Disputes**

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

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

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

**a. Final Payment**

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

**b. Informal Appeal**

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

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

c. Formal Appeal

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

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

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

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

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

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

d. Further Resolution - If the dispute is not resolved by the formal appeal process to CONTRACTOR's satisfaction, or CONTRACTOR has not received a written decision from the

Associate Director, PCB, OBS, after thirty (30) calendar days, or other mutually agreed extension, CONTRACTOR may thereafter pursue its right to institute other dispute resolution process(es), if any, available under the laws of the State of California.

**Section 9.04 Computer Software Management Memo.**

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

**Section 9.05 Accounting Principles – No Dual Compensation**

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

**Section 9.06 Subcontractor/Consultant Information**

CONTRACTOR is required to identify all subcontractors and consultants who will perform labor or render services in the performance of this Agreement. Additionally, the CONTRACTOR shall notify the Department of Corrections and Rehabilitation, Office of Business Services, in writing, within ten (10) working days, of any changes to the subcontractor and/or consultant information.

**Section 9.07 Employment of Ex-Offenders**

CONTRACTOR 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;
- b. Ex-Offenders at any time if they are required to register as a sex offender pursuant to Penal Code Section 290 or if such ex-offender has an offense history involving a “violent felony” as defined in subparagraph (c) of Penal Code Section 667.5; or
- c. Any ex-felon in a position which provides direct supervision of parolees.

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

- a. CONTRACTOR shall obtain the prior written approval to employ any such ex-offender from the Out-of-State Administration Unit; and
- b. Any ex-offender whose assigned duties are to involve administrative or policy decision-making; accounting, procurement, cashiering, auditing, or any other business-related administrative function shall be fully bonded to cover any potential loss to the State of California.

**Section 9.08 Electronic Waste Recycling**

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

**Section 9.09 Excise Tax**

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

**Section 9.10 Licenses and Permits**

The CONTRACTOR shall be an individual or firm licensed to do business in the state in which the facility is located and shall obtain at CONTRACTOR's expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this Agreement.

In the event any license(s) and/or permit(s) expire at any time during the term of this Agreement, CONTRACTOR agrees to provide the CDCR with a copy of the renewed license(s) and/or permit(s) within thirty (30) days following the expiration date. In the event the CONTRACTOR fails to keep in effect at all times all required license(s) and permit(s), the State may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

**Section 9.11 Conflict of Interest**

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

**a. 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 is engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the agreement while employed in any capacity by any state agency.
- (2) For the 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 CONTRACTOR shall avoid any conflict of interest whatsoever with respect to any financial dealings, employment services, or opportunities offered to inmates or parolees. The

CONTRACTOR shall not itself 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 the CDCR. In addition, the CONTRACTOR 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 CDCR. For the purposes of this paragraph, "affiliated company, person or business" means any company, business, corporation, nonprofit corporation, partnership, limited partnership, sole proprietorship, or other person or business entity of any kind which has any ownership or control interest whatsoever in the CONTRACTOR, or which is wholly or partially owned (more than 5% ownership) or controlled (any percentage) by the CONTRACTOR or by the CONTRACTOR's owners, officers, principals, directors and/or shareholders, either directly or indirectly. "Affiliated companies, persons or businesses" include, but are not limited to, subsidiary, parent, or sister companies or corporations, and any company, corporation, nonprofit corporation, partnership, limited partnership, sole proprietorship, or other person or business entity of any kind that is wholly or partially owned or controlled, either directly or indirectly, by the CONTRACTOR or by the CONTRACTOR's owners, officers, principals, directors and/or shareholders.

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

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

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

#### **Section 9.12 CONTRACTOR Employee Misconduct**

During the performance of this Agreement, it shall be the responsibility of the CONTRACTOR whenever there is an allegation of employee misconduct associated with and directly impacting inmate and/or parolee rights, to immediately notify the CDCR of the incident(s), to cause an investigation to be conducted, and to provide CDCR with all relevant information pertaining to the incident(s). All relevant information includes, but is not limited to: a) investigative reports; b) access to inmates/parolees and the associated staff; c) access to employee personnel records; d) that information reasonably necessary to assure CDCR 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 CONTRACTOR has taken such remedial action, in the event of employee misconduct with inmates and/or parolees, as will assure against a repetition of the incident(s). Notwithstanding the foregoing, and without waiving any obligation of the CONTRACTOR, CDCR retains the power to conduct an independent investigation of any incident(s). Furthermore, it is the responsibility of the CONTRACTOR to include the foregoing

terms within any and all subcontracts, requiring that subcontractor(s) agree to the jurisdiction of CDCR to conduct an investigation of their facility and staff, including review of subcontractor employee personnel records, as a condition of the Agreement. Nothing contained in this paragraph shall be deemed to constitute a waiver of any attorney/client privilege or of the work product doctrine privilege.

**Section 9.13 Equal Employment Opportunity.**

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

**Section 9.14 Binding Nature**

Upon its execution by both parties, this Agreement shall be binding on the parties.

**Section 9.15 Invalidity and Severability.**

To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. In the event that any provision of this Agreement is held invalid, that provision shall be null and void. However, the validity of the remaining provisions of the Agreement shall not be affected thereby.

**Section 9.16 Jurisdiction and Venue.**

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

**Section 9.17 Subcontracting and Assignment.**

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

**Section 9.18 California General Terms and Conditions – Incorporation by Reference.**

By reference, all of the State of California's General Terms and Conditions posted on the California Department of General Services' internet address at: <http://www.documents.dgs.ca.gov/ols/GTC-306.doc> are incorporated herein.

**Section 9.19 Notices.**

Any notice provided for in this Agreement shall be in writing and served by personal delivery, designated CDCR electronic mail system, or United States Mail, postage prepaid, at the addresses listed below, until such time as written notice of change of address is received from either party. Any notice so mailed and any notice served by electronic mail or personal delivery shall be deemed delivered and effective upon receipt or upon attempted delivery. This method of notification will be used in all instances, except for emergency situations when immediate notification is required pursuant to the appropriate sections of this Agreement.

All notices will be sent to:

CDCR: Notice information to be provided prior to occupancy.

CONTRACTOR: Notice information to be provided prior to occupancy.

**Section 9.20 Confidentiality of Records.**

CDCR and CONTRACTOR agree that all inmate records and inmate/patient medical record information is identified as confidential and shall be held in trust and confidence and shall be used only for the purposes contemplated under this Agreement.

CONTRACTOR by acceptance of this Agreement is subject to all of the requirements of the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (Code of Federal Regulations 9cfr), Title 45, Sections 164.501 et seq.); the California Government Code Sections 1798, et seq.; regarding the collections, maintenance, and disclosure of personal and confidential information about individuals.

**Section 9.21 Ownership of Material Information, Data, Computer Software Documentation, Studies and Evaluations.**

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

**Section 9.22 Reporting.**

CONTRACTOR shall submit to the CDCR Contract Monitor, on a quarterly basis, a written program report specifying progress made for each activity identified in the CONTRACTOR's duties and obligations, regarding the performance of the Agreement. Such written analysis shall be in accordance with the procedures developed and prescribed by the CDCR. The preparation of reports in a timely manner shall be the responsibility of the CONTRACTOR and failure to comply may result in delay of payment of funds. Required reports shall be submitted to the CDCR not later than thirty (30) days following the end of each calendar quarter, or at such time as otherwise specified.



**Section 9.23 Records.**

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

- 9.23.1 The CONTRACTOR shall maintain a complete file of all records, documents, communications and other materials which pertain to the operation of programs or the delivery of services under this Agreement. Such materials shall be sufficient to properly reflect all direct and indirect costs of labor, materials, equipment, supplies, services and other costs of whatever nature for which an Agreement payment was made. These records shall be maintained according to generally accepted accounting principles and shall be easily separable from other Facility records. The CDCR's access to records pursuant to this provision shall be limited to those documents necessary to monitor contract compliance or to verify specific costs for which the CONTRACTOR sought reimbursement under this Agreement.
- 9.23.2 All such records, documents, communications and other materials shall be the property of CDCR and shall be maintained by the CONTRACTOR, in a central location with a designated custodian, on behalf of CDCR, for a period of three (3) years from the final payment of this Agreement, or until an audit had been completed with the following qualification: If an audit by or on behalf of the federal government had begun but is not completed at the end of the three (3) year period, the materials shall be retained until the resolution of the audit finding.
- 9.23.3 CONTRACTOR shall permit the CDCR to audit and/or inspect its records during the term of this Agreement and for a period of three (3) years following the termination of the Agreement to assure compliance with the terms hereof or to verify actual costs subject to reimbursement under this Agreement.

**Section 9.24 No Third Party Benefit.**

This Agreement shall benefit and burden the parties hereto in accordance with its terms and conditions and is not intended, and shall not be deemed or construed, to confer rights, powers, benefits or privileges on any person or entity other than the parties to this Agreement. This Agreement is not intended to create any rights, liberty interests, or entitlements in favor of any CDCR Offender. The Agreement is intended only to set forth the contractual rights and responsibilities of the Agreement parties. CDCR Offenders

shall have only those entitlements created by Federal or State constitutions, statutes, regulations, case law, or applicable court orders.

**Section 9.25 Survival of Certain Terms.**

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

**Section 9.26 Counterparts/Facsimile Signature.**

This agreement may be executed in counterparts. The parties shall exchange their executed counterpart to each other, both by first class mail .The parties may treat a facsimile signature as a valid signature and when both parties have executed this agreement, they may transmit their signature on the contract to the other, and when mutually exchanged by facsimile, this agreement may be deemed fully executed.

**Section 9.27 Amendment.**

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

**Section 9.28 Governing Standards**

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

California Department of Corrections and Rehabilitation  
SCOPE OF WORK

Exhibit A

IN WITNESS WHEREOF, intending to be legally bound, the parties have caused their authorized representatives to execute this Agreement on the date first written above.

CDCR

John Dovey,  
Director, Division of Adult Institutions  
1515 S Street, Suite 351-N  
Sacramento, CA 95814

*(Original signed by)*  
\_\_\_\_\_ Date

CONTRACTOR

Lucibeth Mayberry  
Vice President Business Development  
10 Burton Hills Blvd.  
Nashville, TN 37215

*(Original signed by)*  
\_\_\_\_\_ Date