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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17
18 MARCIANO PLATA, et al.,
19 Plaintiffs,
20 v.
21 ARNOLD SCHWARZENEGGER, et al.,
22 Defendants.

Case No. C01-1351 TEH

**DECLARATION OF JOHN
HAGAR IN SUPPORT OF
RECEIVER'S OPPOSITION TO
DEFENDANTS' MOTION TO
TERMINATE THE
RECEIVERSHIP AND THE
RECEIVER'S CONSTRUCTION
PLANS**

Hon. Thelton E. Henderson

1 I, John Hagar, declare:

2 1. I am the Chief of Staff Turnaround and Senior Counsel for Receiver J. Clark Kelso
3 in the matter *Plata v. Schwarzenegger*. In this capacity, I regularly confer with the Receiver and
4 other staff members to ensure that the Receiver's goals and directives are being implemented. I
5 have been actively involved in the discussions, general oversight and coordination of the
6 Receiver's capital projects and operations. Unless otherwise stated, I know the following facts to
7 be true of my own knowledge, and if called as a witness I could competently so testify. I make
8 this declaration in support of the Receiver's Opposition to the Defendants' Motion to Terminate
9 the Receiver and the Receiver's Construction Plans.

10 **Out-of-State Transfers**

11 2. I have reviewed Scott Kernan's Declaration in support of Defendants' motion, in
12 which he states that the "Receiver broadly contends that his authority as Receiver in this case
13 gives him authority over every California inmate, whether housed in a California prison or at an
14 out-of-state prison facility." This statement is inaccurate. The Receiver's authority with respect
15 to the out-of-state transfer of California inmates is set forth in the Governor's Prison
16 Overcrowding State of Emergency Proclamation, dated October 4, 2006. The Governor's
17 Proclamation, attached hereto as Exhibit A, states that "[t]he CDCR Secretary shall, before
18 selecting any inmate for transfer who has individual medical and/or mental health needs, consult
19 with the court-appointed Receiver of the CDCR medical system and/or the court-assigned Special
20 Master in the *Coleman* mental-health case, depending on the health care needs of the inmate, to
21 determine whether a transfer would be appropriate." The Governor's Emergency Proclamation
22 further requires inmates to be housed in facilities providing constitutionally adequate care. The
23 Proclamation also requires the CDCR Secretary to carefully and thoroughly evaluate the cost-
24 effectiveness of transfers.

25 3. Around when the Governor's Emergency Proclamation was released, CDCR's
26 Undersecretary Kingston Prunty, asked me, on very short notice, to expeditiously organize a
27 coordinated program to provide the appropriate level of medical screening for up to 5,000
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1 prisoners designated for out-of-state transfers. I agreed and immediately began conducting
2 meetings with CDCR officials.

3 4. The Receiver's Chief Medical Officer, Dr. Terry Hill, and I worked closely with
4 CDCR's Director of Nursing to develop a screening tool for out-of-state transfers. Dr. Hill also
5 worked with CDCR officials to develop and implement a plan to inspect the medical facilities at
6 each out-of-state location.

7 5. Also, from the inception of the out-of-state program concept, the Receiver's Chief
8 of Staff and Staff Counsel conducted numerous meetings with CDCR officials to ensure that the
9 contracts between the State and out-of-state providers included provisions requiring adequate
10 medical care. The Receiver and CDCR agreed upon clear and concise "boiler-plate" medical care
11 contract language for all out-of-state contracts. The scope of the Receiver's authority over out-of-
12 state transfers was also mutually developed and agreed upon with CDCR and is included in every
13 out-of-state contract.

14 6. On October 19, 2006, the CDCR entered into a non-competitively bid contract
15 with the Corrections Corporation of America (CCA). The five-year contract, attached hereto as
16 Exhibit B, was finalized about two-weeks after the Governor's Emergency Proclamation. Before
17 the contract was executed, CCA's legal representatives thoroughly reviewed the proposed
18 contract language and requested minor revisions. The Receiver's staff cooperated fully with
19 CDCR until a mutually acceptable agreement was reached by all parties. The contract will
20 eventually provide CDCR with a total of 8,132 out-of-state beds, at a cost to California tax payers
21 not to exceed \$605,127,673. On November 3, 2006, the first 80 inmates were transferred out of
22 California under this contract.

23 7. The contract entered into between CDCR and CCA states: "The Contractor shall
24 provide essential health services, including medical, dental, and mental health services, while
25 meeting the applicable standards and levels of quality established by the ACA, NCCHC, and
26 CCR Title 15. In addition, the Contractor shall provide services consistent with all applicable
27 federal, state, and local laws and regulations governing the delivery of offender health services
28 and any applicable Court orders, including, but not limited to orders issued in the case of *Plata v.*

1 *Schwarzenegger and Coleman v. Schwarzenegger*, and establish the necessary quality controls to
2 ensure all policies and procedures are designed and implemented in a manner to promote orderly
3 and efficient delivery and management of health care services to CDCR Offenders. Compliance
4 with applicable court orders as set forth above shall not be deemed to be submission to the
5 jurisdiction of the ordering court, and is a contractual obligation only.” Notably, CCA would not
6 agree to submit to the Court’s jurisdiction in *Plata*, but the CDCR and CCA did agree to make the
7 Receiver a third party beneficiary so that he could independently bring claims against CCA for
8 failing to meet its obligations. And CCA submitted to the jurisdiction of the Northern District
9 with respect to any contract claims that the Receiver files in the Northern District.

10 8. Although medical screening of inmates for endorsement to the out-of-state
11 program has proved to be work-intensive, with one full screening taking on average 1.6 hours to
12 complete, the Receiver’s Office continues to absorb increasing costs associated with the process
13 to support CDCR’s overcrowding reduction efforts. From October 2006 through January 2009, it
14 is estimated that the Receiver’s clinical/medical staff completed in excess of 25,000 medical
15 screens to identify the 6,400 eligible inmates currently housed at out-of-state facilities. On
16 average, 25% of out-of-state inmates return to a California prison with time remaining on their
17 sentences. This constant movement requires the Receiver’s staff to continuously screen inmates
18 to maintain a pipeline to back-fill the rotating population. This additional workload has made it
19 more difficult for the Receiver to improve the conditions within California’s prisons. The same
20 limited number of competent personnel who met and conferred with CDCR officials, proposed
21 modifications to the State contract to protect the rights of California prisoners, developed and
22 implemented the medical screening process, and who, to this day, inspect private prisons, could
23 have been working on in-state remedial programs.

24 **Events Surrounding Review of Mississippi Prison Housing California Inmates**

25 9. In his declaration, Mr. Kernan makes several broad allegations about the
26 Receiver’s actions with respect to out-of-state transfers on the basis of certain events surrounding
27 the review of medical care at CCA’s Tallahatchie County Correctional Facility (TCCF) in
28 Mississippi, which was triggered by the death of a California inmate while in custody there. The

1 facts about that review do not support Defendants' or Mr. Kernan's allegations, as I describe
2 below.

3 10. On April 23, 2008, I was advised that an inmate housed at TCCF died from
4 medical-related causes. Initial reports were that the inmate had a history of asthma and died
5 while being transported to an outside hospital. The preliminary medical report on the death
6 indicated that the death was possibly preventable, a fact that Mr. Kernan's declaration ignores.

7 11. On May 26, 2008, staff from the Receiver's Plata Field Support Division (PFSD)
8 and Medical Oversight Program (MOP) jointly, and in cooperation with CDCR's Office of
9 Internal Affairs, Division of Adult Institutions, and Employee Advocacy Prosecution Team, and
10 together with a representative from the Office of the Inspector General's Bureau of Investigative
11 Review, traveled to Mississippi to conduct a clinical investigation to determine whether the
12 unexpected death of the inmate and similar issues with another inmate were the result of medical
13 misconduct. The investigation revealed that the inmate had complained of asthma symptoms, and
14 suffered several asthma attacks over the course of four months before dying of asthma-related
15 symptoms while being transported to a hospital.

16 12. During the investigation site visit, the Receiver's MOP clinicians (the Chief
17 Medical Officer (CMO), physician, and nurse consultant) reviewed the medical records of
18 another TCCF inmate who had been hospitalized in critical condition. The preliminary medical
19 report on that inmate also indicated the medical crisis was possibly preventable. The
20 investigation found that on May 13, 2008, this inmate was hospitalized and diagnosed with a
21 serious heart condition. Although the inmate remained in the hospital throughout the MOP
22 investigative site visit, he was later returned to the TCCF. TCCF placed the inmate on a watch
23 list and returned him to general population housing. Shortly thereafter, the out-of-state CMO
24 found the inmate's vital signs to be of concern. The CMO placed a call to a TCCF physician
25 asking him to review the inmate's medical records immediately, as urgent care was indicated.
26 The inmate was immediately hospitalized (within hours of the telephone call) and received a life-
27 saving heart procedure. This inmate was ultimately returned to a California facility. Mr.
28 Kernan's declaration makes no mention of this incident.

1 13. Mr. Kernan's declaration also does not mention that the medical documentation
2 received in both inmates' cases described above indicated that the care and treatment provided
3 did not meet the level of care outlined in the stipulated *Plata* policies and procedures. The
4 investigations identified systemic issues with both the primary care providers as well as the health
5 care system at TCCF that contributed to the unexpected death of the first inmate and the medical
6 harm to the second. The provider and systemic issues identified in these incidents that continued
7 to pose a serious medical threat to all inmates requiring medical attention at TCCF included:

- 8 (a) Neither the *Plata* Lawsuit nor the Inmate Medical Services Program
9 Policies & Procedures (IMSP&P) were followed by CCA.
- 10 (b) Medical staffing for the facility did not comply with the staffing
11 requirements of *Plata* Policies & Procedures.
- 12 (c) The process for scheduling, tracking, and follow-up of medical
13 appointments did not comply with *Plata* Policies & Procedures.
- 14 (d) Licensed Practical Nurses (LPN) appeared to be practicing outside their
15 scope of practice.
- 16 (e) Supervision of mid-level clinicians was inadequate to ensure compliance
17 with protocols.
- 18 (f) Peer review or quality review of clinicians appeared to be inadequate to
19 ensure compliance with protocols and the standard of care.
- 20 (g) Processes to credential or hire clinicians did not appear to adequately
21 match skills with the scope of work.

22 14. After the two serious incidents at TCCF, the Receiver temporarily suspended
23 inmate transfers to the Mississippi facility. Mr. Kernan states that the Receiver "instructed
24 CDCR to discontinue transfers," without clarifying that this temporary suspension applied only to
25 the Mississippi facility, and that both CDCR and CCA agreed and expressed that they understood
26 the need for the decision. The recommendation resulting from the joint on-site investigation of
27 TCCF was for the Receiver to complete an analysis of the systemic failures at TCCF and to assist
28

1 CDCR in developing a Corrective Action Plan (CAP) to ensure that CCA would provide
2 California inmates with a constitutionally adequate level of health care as contractually required.

3 15. In June 2008, staff from the Receiver's Plata Field Support Division and MOP met
4 with CDCR officials several times to develop a draft TCCF Remedial Plan. On July 1, 2008, the
5 Receiver's Office conducted an executive-level meeting with all parties, informing CCA and
6 CDCR that a CAP was required to address the clinical and access to care findings of the on-site
7 investigation.

8 16. After having identified the non-compliance by CCA with its contractual
9 obligations and with minimum constitutional standards at the Mississippi facility, the Receiver's
10 Office also determined that a review and redesign of the pre-transfer medical screening criteria
11 was warranted. The Receiver's staff immediately began working cooperatively with CDCR and
12 CCA to assist on the remedial plan and the CAP, and began reviewing the medical screening
13 criteria. The CAP was completed in July and August 2008.

14 17. The CAP was thus developed and agreed to by CCA after investigative findings
15 indicated that the care and treatment provided to two patient-inmates in the Mississippi facility
16 did not meet the constitutional level of care outlined in the *Plata* policies and procedures. CDCR
17 has never requested that the Receiver review the proposed medical program cost increases
18 resulting from the investigation and remediation of the Mississippi facility's deficiencies.

19 18. Mr. Kernan suggests that the Receiver is somehow at fault for additional
20 "liabilities" incurred by CDCR and CCA associated with the Mississippi review. (Kernan Decl.
21 ¶ 8.) I do not understand the basis for this allegation. Any additional costs incurred by CCA and
22 CDCR as a result of the changes to the out-of-state activation schedule were preventable by
23 CDCR and CCA in at least two ways. First, CCA could have complied with the terms and
24 conditions of its original contract, but did not. Second, CDCR could have properly monitored
25 CCA's compliance with its contract provisions, but did not.

26 19. The majority of the costs identified in Exhibit A to the Kernan Declaration were
27 not requested by the Receiver's staff, but rather were identified by CCA in the CAP to enable
28 CCA to comply with the terms of its contract with CDCR.

Staffing and Costs for Monitoring Out-of-State Transfers

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2 20. In his declaration, Mr. Kernan asserts that “[t]he CDCR maintains a team of
3 approximately 33 correctional staff that tours out-of-state facilities and monitors their
4 operations.” (Kernan Decl. ¶ 4.) That monitoring team, however, does not include any medical
5 staff. The team was developed in response to correctional lockdown issues at the out-of-state
6 facilities. While the team worked with CCA to manage lockdowns, the team did nothing to
7 ensure that inmates obtained the access to care as required in *Plata*. Because the CDCR team did
8 not perform the necessary oversight to ensure *Plata* compliance, prisoners at the CCA facility in
9 Mississippi were not getting to nurses and doctors when the prisoners needed medical attention.
10 This and other findings of the on-site investigation of the Mississippi facility demonstrate that Mr.
11 Kernan’s implied assertion that CDCR did an adequate job monitoring conditions at the CCA
12 facility in Mississippi prior to the incidents that triggered review is not supported by any facts.

13 21. Furthermore, the CDCR team does not have the training or expertise necessary to
14 ensure that proper compliance with medical corrective action plans is occurring in out-of-state
15 facilities, a failure of basic correctional oversight by CDCR officials. To determine whether the
16 appropriate number of CCA clinical staff are operating in the appropriate classifications and
17 practicing within their scope of licensure at these facilities requires clinical skills, not correctional
18 experience.

19 22. The workload associated with screening inmates for the out-of-state pipeline is
20 resource intensive, costly, and time consuming. Given the competing priorities with in-state
21 inmate medical concerns, the lack of space and overcrowded conditions within the CDCR
22 facilities, and the continuous rotation of inmate populations, to expect the Receiver to continue to
23 support the out-of-state program without additional resources is unreasonable.

24 23. In addition to the screening workload identified for the out-of-state process, the
25 Receiver is experiencing a shortfall in staffing resources necessary to appropriately monitor the
26 ever-growing number of inmates housed in multiple out-of-state facilities while continuing to
27 work towards securing constitutionally adequate medical care to the still-overcrowded in-State
28 inmate population. Mr. Kernan states that in 2007 the Receiver told CDCR that no resources

1 were needed for out-of-state monitoring, but then “demanded” 26 positions following the events
2 in Mississippi and has since requested up to 80 positions. (Kernan Decl. ¶ 10.) Mr. Kernan’s
3 description is misleading. After the Receiver’s unexpected site visits to private in-state prisons,
4 and after receiving the TCCF investigative results, the Receiver’s Office developed the Plata
5 Field Support Division. Currently there are only 10 positions allocated to this division. In
6 December 2008, after months of discussion, CDCR agreed to provide the Receiver with 26
7 established, funded positions for monitoring purposes in 2009. However, due to delays in
8 CDCR’s ability to identify the funding source, 13 of the positions were not established under on
9 or about February 11, 2009.

10 24. As for the additional positions, the Receiver is expecting CDCR’s support for the
11 Receiver’s Budget Year 2009/10 out-of-state finance letter that is requesting 35 positions to
12 provide the necessary foundation for proper oversight of this extensive and ever-growing
13 population.

14 **Cooperation and Participation in Formulation of Receiver’s Plans**

15 25. The Receiver’s construction program has two separate elements: 1) physical
16 upgrades at existing prisons to allow for access to medical and mental healthcare; and
17 2) construction of healthcare facilities for the approximately 10,000 inmates with such severe and
18 long-lasting illnesses that they require chronic care. The two elements of the Receiver’s
19 construction efforts are separate but interrelated. Upgrades alone would not be sufficient to bring
20 healthcare in California’s prisons up to constitutional compliance.

21 26. The physical upgrades are specific to each institution. Each one requires approval
22 by the District Court. The Receiver has secured the District Court’s waiver of state laws so that
23 we can move forward at a faster pace with construction at four prisons: Avenal State Prison,
24 CTF-Soledad, the California Rehabilitation Center (CRC) prison, and Mule Creek State Prison.
25 Appellants did not object to the Receiver’s efforts to secure those approvals.

26 27. The Avenal waiver was approved in December 2007, and significant construction
27 has already taken place on that project. The District Court approved waivers with respect to the
28 CTF-Soledad, CRC, and Mule Creek projects in July 2008. Implementation of the Receiver’s

1 plans has begun at all three of those prisons. Construction design teams have also been
2 dispatched to seven other prisons.

3 28. Representatives from the California Department of Corrections and Rehabilitation
4 (CDCR), who report to CDCR Secretary Matthew Cate, are frequently informed of cost estimates
5 and the fluidity of financial data related to these upgrade projects.

6 29. The other element of the Receiver's construction plans is the construction of seven
7 healthcare facilities located on CDCR property, but outside the existing prison security perimeter.
8 The decision to build separate facilities on CDCR property to house inmates with severe medical
9 and mental health needs was informed by several reasons, including the following:

10 (a) There is insufficient space inside existing prison buildings to add the
11 number of beds needed.

12 (b) New facilities for chronic care can be built considerably quicker and
13 cheaper as separate facilities. Building additional beds within existing
14 buildings, or expanding on existing buildings, is a laborious and intense
15 process.

16 (c) The infrastructure at existing buildings is so overburdened and dilapidated,
17 that it is easier and costs less to build new infrastructure for separate
18 facilities.

19 30. In or around August 2006, CDCR Secretary James Tilton gave the original
20 Receiver, Robert Sillen, a list of CDCR institutions that were located near urban areas, and which
21 might be suitable sites for the construction of healthcare facilities on CDCR property to house
22 10,000 medical and mental health beds.

23 31. Several months later, I began holding bi-weekly, and sometimes more frequent,
24 meetings with CDCR officials to discuss the coordination of Receiver's construction plans. At
25 these meetings, we discussed site selection, facility size, cost, infrastructure, and other critical
26 aspects of correctional construction. In addition to CDCR officials, Robert Gore and Ben Rice
27 from the Governor's Office were regular attendees, as was Deborah Hysen, Chief Deputy
28 Secretary of CDCR.

1 32. I have reviewed Defendants' Motion to Terminate the Receivership and the
2 Receiver's Construction Plans, and am aware that Defendants repeatedly list and criticize the
3 inclusion of certain design features related to space for therapeutic and recreational activities.
4 Defendants fail to mention, however, that the majority of the design elements they list have been
5 included in the plans for new healthcare facilities at the State's own request, and in order to
6 address the needs of those inmates requiring beds for mental health care. I am also aware that
7 Defendants criticize the mission statements articulated in the current version of the Facilities
8 Program Statement mentioning the goal of returning ill prisoners to "a condition that prepares
9 him or her to return to general custody or to be released to the community," and noting that the
10 expansion facilities will care for "prisoners as patients." (Def. Mot. at 7.) These goals, however,
11 like the design elements I discuss above, have been driven by CDCR officials as well as medical
12 and corrections experts on the Receiver's staff. I am not aware of any members of the design
13 advisory groups, including the participating CDCR officials, who have objected to the underlying
14 goals of the expansion facilities that Defendants now criticize. Furthermore, the Program
15 Statement objective is also consistent with the rehabilitation mandates of AB 900.

16 33. I have attended numerous meetings throughout the course of the Receivership with
17 CDCR officials, officials from the Governor's Office, and lawyers from Attorney General's
18 Office, at which the issue of construction of facilities has been discussed and approved. Among
19 the State officials who have attended such meetings were Andrea Hoch, the Governor's Legal
20 Affairs Secretary; Jim Tilton, former Secretary of CDCR; Matthew Cate, current Secretary of
21 CDCR; Lisa Tillman, Deputy Attorney General; Benjamin Rice, formerly an attorney in the
22 Governor's Office and now with CDCR; Robert Gore, Senior Deputy Cabinet Secretary of
23 CDCR; Paul Mello, outside counsel; and Deborah Hysen, CDCR's Chief Deputy Secretary of
24 Facility Planning, Construction and Management.

25 34. The Receiver has also provided numerous documents to State officials, in addition
26 to the documents filed with the District Court, that have described the Receiver's proposed capital
27 projects, including their scope and anticipated cost.
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GENERAL ORDER 45 ATTESTATION

I, James J. Brosnahan, am the ECF User whose ID and password are being used to file this Declaration of John Hagar in Support of Receiver’s Opposition to Defendants’ Motion to Terminate the Receivership and the Receiver’s Construction Plans. In compliance with General Order 45, X.B., I hereby attest that John Hagar has concurred in this filing.

/s/ James J. Brosnahan
James J. Brosnahan
Attorneys for Receiver

Exhibit A



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

PROCLAMATION

10/04/2006

Prison Overcrowding State of Emergency Proclamation

PROCLAMATION

by the
Governor of the State of California

WHEREAS, the California Department of Corrections and Rehabilitation (CDCR) is required by California law to house inmates committed to state prison; and

WHEREAS, various trends and factors, including population increases, parole policies, sentencing laws, and recidivism rates have created circumstances in which the CDCR is now required to house a record number of inmates in the CDCR prison system, making the CDCR prison system the largest state correctional system in the United States, with a total inmate population currently at an all-time high of more than 170,000 inmates; and

WHEREAS, due to the record number of inmates currently housed in prison in California, all 33 CDCR prisons are now at or above maximum operational capacity, and 29 of the prisons are so overcrowded that the CDCR is required to house more than 15,000 inmates in conditions that pose substantial safety risks, namely, prison areas never designed or intended for inmate housing, including, but not limited to, common areas such as prison gymnasiums, dayrooms, and program rooms, with approximately 1,500 inmates sleeping in triple-bunks; and

WHEREAS, the current severe overcrowding in 29 CDCR prisons has caused substantial risk to the health and safety of the men and women who work inside these prisons and the inmates housed in them, because:

With so many inmates housed in large common areas, there is an increased, substantial risk of violence, and greater difficulty controlling large inmate populations.

With large numbers of inmates housed together in triple-bunks, there is an increased, substantial risk for transmission of infectious illnesses.

The triple-bunks and tight quarters create line-of-sight problems for correctional officers by blocking views, creating an increased, substantial security risk.

WHEREAS, the current severe overcrowding in these 29 prisons has also overwhelmed the electrical systems and/or wastewater/sewer systems, because those systems are now often required to operate at or above the maximum intended capacity, resulting in an increased, substantial risk to the health and safety of CDCR staff, inmates, and the public, because:

Overloading the prison electrical systems has resulted in power failures and blackouts within the prisons, creating increased security threats. It has also damaged fuses and transformers.

Overloading the prison sewage and wastewater systems has resulted in the discharge of waste beyond treatment capacity, resulting in thousands of gallons of sewage spills and environmental contamination.

And when the prisons “overdischarge” waste, bacteria can contaminate the drinking water supply, putting the public’s health at an increased, substantial risk.

WHEREAS, overloading the prison sewage and water systems has resulted in increased, substantial risk of damage to state and privately owned property and has resulted in multiple fines, penalties and/or notices of violations to the CDCR related to wastewater/sewer system overloading such as groundwater contamination and environmental pollution; and

WHEREAS, overcrowding causes harm to people and property, leads to inmate unrest and misconduct, reduces or eliminates programs, and increases recidivism as shown within this state and in others; and

WHEREAS, in addition to all of the above, in the 29 prisons with severe overcrowding, the following circumstances exist:

Avenal State Prison has an operational housing capacity of 5,768 inmates, but it currently houses 7,422 inmates, with 1,654 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 64 incidents of assault/battery by inmates — 31 of them against CDCR staff — along with 15 riots/melees, and 27 weapon confiscations.

The California Correctional Center has an operational housing capacity of 5,724 inmates, but it currently houses 6,174 inmates, with 450 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 128 incidents of assault/battery by inmates — 16 of them against CDCR staff — along with 34 riots/melees, and 21 weapon confiscations.

The California Correctional Institution has an operational housing capacity of 4,931, but it currently houses 5,702 inmates, with 771 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 125 incidents of assault/battery by inmates — 79 of them against CDCR staff — along with 5 riots/melees, and 57 weapon confiscations.

Centinela State Prison has an operational housing capacity of 4,368, but it currently houses 4,956 inmates, with 588 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 141 incidents of assault/battery by inmates — 30 of them against CDCR staff — along with 10 riots/melees, and 151 weapon confiscations.

The California Institution for Men has an operational housing capacity of 5,372, but it currently houses 6,611 inmates, with 1,243 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 170 incidents of assault/battery by inmates — 57 of them against CDCR staff — along with 21 riots/melees, and 47 weapon confiscations.

The California Institution for Women has an operational housing capacity of 2,228, but it currently houses 2,624 inmates, with 396 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 65 incidents of assault/battery by inmates — 26 of them against CDCR staff — and 6 weapon confiscations.

The California Men’s Colony has an operational housing capacity of 6,294, but it currently houses 6,574 inmates, with 280 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 151 incidents of assault/battery by inmates — 33 of them against CDCR staff — along with 11 riots/melees, and 29 weapon confiscations.

The California State Prison at Corcoran has an operational housing capacity of 4,954, but it currently houses 5,317 inmates, with 363 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 147 incidents of assault/battery by inmates — 58 of them against CDCR staff — along with 5 riots/melees, and 111 weapon confiscations.

The California Rehabilitation Center has an operational housing capacity of 4,660, but it currently houses 4,856 inmates, with 196 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 65 incidents of assault/battery by inmates — 28 of them against CDCR staff — 9 riots/melees, and 34 weapon confiscations.

The Correctional Training Facility has an operational housing capacity of 6,157, but it currently houses 7,02 inmates, with 870 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 85 incidents of assault/battery by inmates — 26 of them against CDCR staff — along with 9 riots/melees, and 27 weapon confiscations.

Chuckawalla Valley State Prison has an operational housing capacity of 3,443, but it currently houses 4,292 inmates, with 849 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 50 incidents of assault/battery by inmates — 11 of them against CDCR staff — along with 5 riots/melees, and 21 weapon confiscations.

Deuel Vocational Institution has an operational housing capacity of 3,115, but it currently houses 3,911 inmates, with 796 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 114 incidents of assault/battery by inmates — 54 of them against CDCR staff — along with 7 riots/melees, and 37 weapon confiscations.

High Desert State Prison has an operational housing capacity of 4,346, but it currently houses 4,706 inmates with 360 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 351 incidents of assault/battery by inmates — 44 of them against CDCR staff — along with 6 riots/melees, and 289 weapon confiscations.

Ironwood State Prison has an operational housing capacity of 4,185, but it currently houses 4,665 inmates, with 480 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 96 incidents of assault/battery by inmates — 19 of them against CDCR staff — along with 14 riots/melees, and 52 weapon confiscations.

Kern Valley State Prison has an operational housing capacity of 4,566, but it currently houses 4,686 inmates with 120 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 146 incidents of assault/battery by inmates — 60 of them against CDCR staff — along with 10 riots/melees, and 46 weapon confiscations.

The California State Prison at Los Angeles has an operational housing capacity of 4,230, but it currently houses 4,698 inmates, with 468 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 211 incidents of assault/battery by inmates — 123 of them against CDCR staff — along with 4 riots/melees, and 101 weapon confiscations.

Mule Creek State Prison has an operational housing capacity of 3,197, but it currently houses 3,929 inmates, with 732 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 65 incidents of assault/battery by inmates — 35 of them against CDCR staff — along with 1 riot/melee, and 28 weapon confiscations.

North Kern State Prison has an operational housing capacity of 5,189, but it currently houses 5,365 inmates, with 176 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 135 incidents of assault/battery by inmates — 43 of them against CDCR staff — along with 16 riots/melees, and 70 weapon confiscations.

Pelican Bay State Prison has an operational housing capacity of 3,444, but it currently houses 3,604 inmates, with 160 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 256 incidents of assault/battery by inmates — 88 of them against CDCR staff — along with 9 riots/melees, and 106 weapon confiscations.

Pleasant Valley State Prison has an operational housing capacity of 4,368, but it currently houses 5,112 inmates, with 744 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 205 incidents of assault/battery by inmates — 59 of them against CDCR staff — along with 12 riots/melees, and 26 weapon confiscations.

The Richard J. Donovan Correctional Facility has an operational housing capacity of 4,120, but it currently houses 4,720 inmates, with 600 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 244 incidents of assault/battery by inmates — 118 of them against CDCR staff — along with 11 riots/melees, and 96 weapon confiscations.

The California State Prison at Sacramento has an operational housing capacity of 2,973, but it currently houses 3,213 inmates, with 240 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 264 incidents of assault/battery by inmates — 159 of them against CDCR staff — along with 5 riots/melees, and 118 weapon confiscations.

The California Substance Abuse Treatment Facility and State Prison at Corcoran has an operational housing capacity of 6,360, but it currently houses 7,593 inmates, with 1,233 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 120 incidents of assault/battery by inmates — 53 of them against CDCR staff — along with 20 riots/melees, and 124 weapon confiscations.

The Sierra Conservation Center has an operational housing capacity of 5,657, but it currently houses 6,107 inmates, with 450 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 61 incidents of assault/battery by inmates — 18 of them against CDCR staff — along with 19 riots/melees, and 50 weapon confiscations.

The California State Prison at Solano has an operational housing capacity of 5,070, but it currently houses 5,858 inmates, with 788 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 60 incidents of assault/battery by inmates — 26 of them against CDCR staff — along with 4 riots/melees, and 114 weapon confiscations.

San Quentin State Prison has an operational housing capacity of 4,933, but it currently houses 5,183 inmates with 287 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 262 incidents of assault/battery by inmates — 123 of them against CDCR staff — along with 15 riots/melees, and 118 weapon confiscations.

Salinas Valley State Prison has an operational housing capacity of 4,200, but it currently houses 4,680 inmates, with 480 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 181 incidents of assault/battery by inmates — 82 of them against CDCR staff — along with 7 riots/melees, and 91 weapon confiscations.

Valley State Prison for Women has an operational housing capacity of 3,902, but it currently houses 3,958 inmates, with 56 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 125 incidents of assault/battery by inmates — 75 of them against CDCR staff — and 15 weapon confiscations.

Wasco State Prison has an operational housing capacity of 5,838, but it currently houses 6,098 inmates, with 260 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 226 incidents of assault/battery by inmates — 97 of them against CDCR staff — along with 32 riots/melees, and 82 weapon confiscations.

WHEREAS, some of these 29 severely overcrowded prisons may even be housing more inmates, because the inmate population continually fluctuates among the CDCR prisons; and

WHEREAS, in addition to the 1,671 incidents of violence perpetrated in these 29 severely overcrowded prisons by inmates against CDCR staff last year, and the 2,642 incidents of violence perpetrated in these prisons on inmates by other inmates in the last year, the suicide rate in these 29 prisons is approaching an average of one per week; and

WHEREAS, the federal court in the *Coleman* case found mental-health care in CDCR prisons to be below federal constitutional standards due in part to the lack of appropriate beds and space; and

WHEREAS, the use of common areas for inmate housing has severely modified or eliminated certain inmate programs in the 29 prisons with severe overcrowding; and

WHEREAS, the severe overcrowding has also substantially limited or restricted inmate movement, causing significantly reduced inmate attendance in academic, vocational, and rehabilitation programs; and

WHEREAS, overcrowded prisons in other states have experienced some of the deadliest prison riots in American history, including:

In 1971, the nation's deadliest prison riot occurred in Attica, New York, resulting in the death of 43 people. On the day of this riot, the prison — which was built for 1600 — housed approximately 2,300 inmates.

In 1981, a riot occurred in the New Mexico State Penitentiary. More than 30 inmates were killed, more than 100 people were injured, and 12 officers were taken hostage, some of whom were beaten, sexually assaulted, and/or raped. On the day of this riot, the prison — which was built for 900 — housed approximately 1,136 inmates.

In 1993, a riot occurred in Lucasville, Ohio. One officer was murdered, four officers were seriously injured, and nine inmates were killed. On the day of this riot, the prison — which was built for 1600 — housed approximately 2,300 inmates.

WHEREAS, I believe immediate action is necessary to prevent death and harm caused by California's severe prison overcrowding; and

WHEREAS, because of the housing shortage in CDCR prisons, the CDCR has current contracts with four California counties to house 2,352 additional state inmates in local adult jails, but this creates the following overcrowding problem in the county jails:

According to a report by the California State Sheriffs' Association in June 2006, adult jails recently average a daily population of approximately 80,000 inmates. On a typical day, the county jails lacked space for more than 4,900 inmates across the state.

Based on the same report, 20 of California's 58 counties have court-imposed population caps resulting from litigation brought by or on behalf of inmates in crowded jails and another 12 counties have self-imposed caps.

Most of California's jail population consists of felony inmates, but when county jails are full, someone in custody must be released before a new inmate can be admitted.

The 2006 Sheriffs' Association report states that last year, 233,388 individuals statewide avoided incarceration or were released early into local communities because of the lack of jail space.

WHEREAS, overcrowding conditions are projected to get even worse in the coming year, to the point that the CDCR expects to run out of all common area space to house prisoners in mid-2007, and will be unable to receive any new inmates; and

WHEREAS, in January 2006, I proposed \$6 billion in the Strategic Growth Plan to help manage inmate population at all levels of government by increasing the number of available local jail beds and providing for two new prisons and space for 83,000 prisoners to address California's current and future incarceration needs; and

WHEREAS, the California Legislature failed to act upon this proposal; and

WHEREAS, in March 2006, a proposal was submitted as part of my 2006-07 budget to enable the CDCR to contract for a total of 8,500 beds in community correctional facilities within the state; and

WHEREAS, the California Legislature denied this proposal; and

WHEREAS, on June 26, 2006, I issued a proclamation calling the Legislature into special session because I believed urgent action was needed to address this severe problem in California's prisons, and I wanted to give the Legislature a further opportunity to address this crisis; and

WHEREAS, the CDCR submitted detailed proposals to the Legislature to address the immediate and longer term needs of the prison system in an effort resolve the overcrowding crisis; and

WHEREAS, the California Legislature failed to adopt the proposals submitted by the CDCR, and also failed to adopt any proposals of its own; and

WHEREAS, in response, my office directed the CDCR to conduct a survey of certain inmates in California's general population to determine how many might voluntarily transfer to out-of-state correctional facilities; and

WHEREAS, the CDCR reports that more than 19,000 inmates expressed interest in voluntarily transferring to a correctional facility outside of California; and

WHEREAS, the overcrowding crisis gets worse with each passing day, creating an emergency in the California prison system.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, in light of the aforementioned, find that conditions of extreme peril to the safety of persons and property exist in the 29 CDCR prisons identified above, due to severe overcrowding, and that the magnitude of the circumstances exceeds the capabilities of the services, personnel, equipment, and facilities of any geographical area in this state. Additionally, the counties within the state are harmed by this situation, as the inability to appropriately house inmates directly impacts local jail capacity and the early release of felons. This crisis spans the eastern, western, northern, and southern parts of the state and compromises the public's safety, and I find that local authority is inadequate to cope with the emergency. Accordingly, under the authority of the California Emergency Services Act, set forth at Title 2, Division 1, Chapter 7 of the California Government Code, commencing with section 8550, I hereby proclaim that a State of Emergency exists within the State of California's prison system.

Pursuant to this proclamation:

I. The CDCR shall, consistent with state law and as deemed appropriate by the CDCR Secretary for the sole purpose of immediately mitigating the severe overcrowding in these 29 prisons and the resulting impacts within California, immediately contract for out-of-state correctional facilities to effectuate voluntary transfers of California prison inmates to facilities outside of this state for incarceration consisting of constitutionally adequate housing, care, and programming.

II. The CDCR Secretary shall, after exhausting all possibilities for voluntary transfers of inmates, and in compliance with the Interstate Corrections Compact and the Western Interstate Corrections Compact, and as he deems necessary and appropriate to mitigate this emergency, effectuate involuntary transfers of California prison inmates, based on criteria set forth below, to institutions in other states and those of the federal government for incarceration consisting of constitutionally adequate housing, care, and programming. In such instance, because strict compliance with California Penal Code sections 11191 and 2911 would prevent, hinder, or delay the mitigation of the severe overcrowding in these prisons, applicable provisions of these statutes are suspended to the extent necessary to enable the CDCR to transfer adult inmates, sentenced under California law, to institutions in other state and those of the federal government without consent. This suspension is limited to the scope and duration of this emergency.

A. The CDCR Secretary shall prioritize for involuntary transfer the inmates who meet the following criteria:

1. Inmates who: (a) have been previously deported by the federal government and are criminal aliens subject to immediate deportation; or (b) have committed an aggravated felony as defined by federal statute and are subject to deportation.
2. Inmates who are paroling outside of California.
3. Inmates who have limited or no family or supportive ties in California based on visitation records and/or other information deemed relevant and appropriate by the CDCR Secretary.
4. Inmates who have family or supportive ties in a transfer state.
5. Other inmates as deemed appropriate by the CDCR Secretary.

B. No person under commitment to the Division of Juvenile Justice may be considered for such transfer.

III. The CDCR Secretary shall, before selecting any inmate for transfer who has individual medical and/or mental-health needs, consult with the court-appointed Receiver of the CDCR medical system and/or the court-assigned Special Master in the *Coleman* mental-health case, depending on the healthcare needs of the inmate, to determine whether a transfer would be appropriate.

IV. The CDCR Secretary shall, before effectuating any inmate transfer, carefully and thoroughly evaluate all appropriate factors, including, but not limited to, the cost-effectiveness of any such transfer and whether an inmate selected for transfer has any pending appeals or hearings that may be impacted by such transfer.

V. The CDCR shall, as deemed appropriate by the CDCR Secretary, contract for facility space, inmate

transportation, inmate screening, the services of qualified personnel, and/or for the supplies, materials, equipment, and other services needed to immediately mitigate the severe overcrowding and the resulting impacts within California. Because strict compliance with the provisions of the Government Code and the Public Contract Code applicable to state contracts would prevent, hinder, or delay the mitigation of the severe overcrowding in these prisons, applicable provisions of these statutes, including, but not limited to, advertising and competitive bidding requirements, are suspended to the extent necessary to enable the CDCR to enter into such contracts as expeditiously as possible. This suspension is limited to the scope and duration of this emergency.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.



Secretary of State

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 4th day of October 2006.

ARNOLD SCHWARZENEGGER

Governor of California

ATTEST:

BRUCE McPHERSON

Exhibit B

California Department of Corrections and Rehabilitation
SCOPE OF WORK

Exhibit A

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, 4th 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.

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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.

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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

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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.

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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,

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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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- 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

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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

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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.

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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 15th 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.

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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.

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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

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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

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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.

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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

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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

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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.

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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

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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

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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

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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

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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.

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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

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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.

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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

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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

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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.

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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

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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.

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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)

John Dovey

Date

CONTRACTOR

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

(Original signed by)

Lucibeth Mayberry

Date