

Contractor Name
California Department of Corrections and Rehabilitation

CONSULTING SERVICES AGREEMENT

BETWEEN
("CDCR"):

California Department of Corrections and Rehabilitation (CDCR)
P.O. Box 4038
Sacramento, CA 95812-4038

Telephone: (916) 323-1221
Facsimile: (916) 323-1257

Billing Address:
~~Chief Information Officer~~ SOMS Project Manager
~~P.O. Box 4038, Suite 225~~ 1920 Alabama Ave.
~~Sacramento, CA 95812-4038~~ Rancho Cordova, CA 95742

and the Contractor:

Contractor Name
Contractor Address
Anytown, CA 95660

Telephone: (916) XXX-XXX
Facsimile: (916) XXX-XXX

The Project is:

**Strategic Offender Management System (SOMS)
Independent System Integrator Functional and Technical
Assessment (SIFTA) Services**

THIS CONSULTING SERVICES AGREEMENT ("Agreement"), effective as of the date set forth above, is between CDCR and Contractor, who state and agree as follows:

1. CDCR; Contractor. The United States District Court for the Northern District of California has established a Receivership to assume the executive management of the California prison medical system and raise the level of care up to constitutional standards. On January 23, 2008, the Court appointed J. Clark Kelso to serve as the Receiver and granted him, among other powers, the authority to exercise all powers vested by law in the Secretary of the California Department of Corrections and Rehabilitation ("CDCR") as they relate to the administration, control, management, operation, and financing of the California prison medical health care system. Contractor shall perform its services pursuant to this Agreement under the direction and management of CDCR. Contractor is an independent contractor and not an agent, servant or representative of CDCR. Contractor has no authority to make any statements, representations or commitments of any kind on behalf of CDCR, or to use the name of CDCR in any publications or advertisements, except with the written consent of CDCR or as explicitly provided herein.

2. Scope of Services. Exhibit A (Scope of Contractor Services) attached hereto contains the scope of the Services to be performed by Contractor under this Agreement (the "Services"). Contractor agrees to perform the Services in a manner at least equal to highest industry standards and good commercial practices, without negligence, errors or omissions.

3. Time of Performance. Time is of the essence of this Agreement. Contractor agrees to perform its Services continuously, diligently, and energetically and to complete the Services in accordance with mutually agreed schedules. Contractor may be entitled to a reasonable extension of time for any delay outside of Contractor's reasonable control, provided Contractor has notified CDCR within five days of any event or condition delaying the Services.

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4. Key Personnel. Contractor has been selected to perform services under this Agreement based upon the qualifications and experience of Contractor's personnel. If a member of Contractor's team specified in this Agreement ceases providing services under this Agreement, Contractor shall replace the team member with a similarly qualified individual acceptable to CDCR within 30 days of the team member's unavailability to CDCR.

5. Conflict of Interest. In accepting this Agreement, Contractor covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services. Contractor further covenants that, in the performance of the Services, it will not employ any contractor or person having such an interest.

6. Confidentiality of Information. All financial, statistical, personal, technical and other data and information relating to California Prison Health Care Receivership (CPR), CDCR or State operations, which are designated confidential by CPR, CDCR or the State and made available to carry out this Agreement, or which become available to Contractor in order to carry out this Agreement, shall be protected by Contractor from unauthorized use and disclosure. Contractor shall not be required under the provisions of this paragraph to keep confidential any data already rightfully in Contractor's possession that is independently developed by Contractor outside the scope of this Agreement or is rightfully obtained from third parties. No reports, information, inventions, improvements, discoveries, or data obtained, repaired, assembled, or developed by Contractor pursuant to this Agreement shall be released, published, or made available to any person without CDCR's prior written approval.

Contractor is authorized to release confidential information covered by this section when required to do so by law, legal process, or applicable professional standards. However, Contractor shall provide CDCR with five calendar days' written notice prior to release of confidential information covered by this section." Contractor is authorized to release confidential information covered by this section when required to do so by law, legal process, or applicable professional standards. However, Contractor shall provide CDCR with five calendar days' written notice prior to release of confidential information covered by this section.

Contractor agrees that all inmate/patient medical information is confidential. If the services provided under this Agreement involves the use of any inmate/patient medical information, Contractor agrees to comply with all applicable patient privacy laws, including, but not limited to, California Civil Code Section 56 et seq. and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA") and the regulations promulgated thereunder. If Contractor receives any "protected health information" (as that term is defined by HIPAA) from the CDCR, Contractor shall comply with the Business Associate Agreement set forth in Exhibit D, which is attached and incorporated herein.

7. Termination; Intellectual Property. CDCR shall have the right to terminate this Agreement at any time in its sole discretion and with or without cause, by written notice to Contractor. CDCR will provide fifteen (15) calendar days written notice of and opportunity to cure any breach(es) that would cause termination in accordance with this section. Contractor shall stop work immediately upon receipt of a notice of termination and promptly deliver to CDCR the results of the Services to the date of termination. To the extent Contractor is preparing documents that may be subject to copyright or other intellectual property rights, CDCR shall own such rights. CDCR will compensate Contractor for work properly performed prior to termination in accordance with paragraph 8, but Contractor shall have no right to lost profit on unperformed services. This right to terminate shall be in addition to, and not in lieu of, any other rights and remedies CDCR may have at law or in equity. Contractor shall have no right to terminate this Agreement except for CDCR's material default.

8. Compensation; Documentation. Compensation for Contractor's performance of the Services shall be as set forth in Exhibit B (Budget Detail and Payment Provisions). Contractor's ~~hours of~~ performance and ensuing compensation are on a ~~time and materials~~ deliverable basis, and are subject to ~~prior approval from~~ acceptance by CDCR's designated Contract Manager or designee. Contractor shall not receive any amount over that set forth in Exhibit B unless otherwise agreed to by written amendment to this Agreement.

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~~Contractor shall establish a satellite office in the Sacramento metropolitan area and CDCR will reimburse Contractor for actual costs incurred in establishing and maintaining said facility. Location, costs, terms and conditions for the Satellite Office are subject to CDCR's prior review and approval, and CDCR shall have no obligation to make payments for Satellite Office costs that exceed the line item amount stipulated in Exhibit B (Budget Detail and Payment Provisions), Item 5 (Cost Breakdown).~~

Contractor shall invoice CDCR ~~monthly~~ for Services performed. Invoice for the Services shall itemize and describe the work performed, identify personnel performing services and ~~the~~ estimated time expended, with appropriate documentation of same attached thereto. Provided that Contractor delivers a properly completed, documented invoice to CDCR, payment will be due forty-five (45) days from CDCR's receipt of such invoice; if invoices are untimely, incomplete or improperly documented, then payment may be delayed until the thirtieth day after CDCR receives a properly completed, documented invoice.

Contractor agrees to provide any supporting documentation for each invoice that CDCR reasonably requests. Contractor will maintain full and accurate records and books of account necessary to document: (a) all activities undertaken by or on behalf of Contractor (including its agents and/or subcontractors) in the course of performing Services hereunder; and (b) all charges, expenses and disbursements incurred by Contractor, its agents or subcontractors in performing Services hereunder. Contractor will promptly make such books and records available to CDCR upon prior written request during normal business hours.

9. Insurance. Exhibit C (Contractor Insurance) sets forth certain insurance requirements and is incorporated herein. Contractor agrees that at all times during the life of this Agreement, it shall maintain at its own cost workers' compensation insurance at minimum statutory limits and any insurance coverage specified in Exhibit C.

10. Indemnification. ~~Contractor shall, with respect to all work that is covered by or incidental to this Agreement, indemnify, defend, and hold the Indemnified Parties harmless from and against any and all claims, liability, loss, damage, costs or expenses, including reasonable attorneys' fees, awards, fines or judgments, resulting from death or bodily injury to persons, injury to property or other loss, damage, claim or expense, to the extent caused by or arising from Contractor's services (whether performed by Contractor or an agent or subcontractor engaged by Contractor). The "Indemnified Parties" are California Prison Health Care Receivership (CPR), CDCR, the State of California, and each of their officers, directors, parents, affiliates, subsidiaries and agents, and all shareholders, officers, directors, employees and managers of same.~~

11. Security.

a. **Conduct in Prisons.** Contractor agrees that if the provisions of this Agreement require Contractor to enter a prison facility, Contractor and any employee(s) and/or subcontractor(s) shall abide by applicable laws, rules and regulations governing conduct at prison facilities and in associating with prison inmates. CPR, CDCR, the State, or their employees shall not be liable to Contractor or its staff for injuries inflicted by inmates/patients of the State.

b. **Gate Clearance.** Contractor must notify CDCR, in writing, of the personnel, and subsequently any changes of those personnel, who will access prison facilities for the purpose of providing services under this Agreement. Contractor and Contractor's employee(s) and/or subcontractor(s) providing services a prison facility will be required to obtain gate clearance prior to providing services at any facility. Requests for gate clearance should be made a minimum of 10 working days prior to commencement of service at prison facilities. The request for gate clearance must include the person's name, social security number, valid state driver's license number or state identification card number and date of birth. Fingerprinting may also be required. This information may be used to run a background check, which may include a California Law Enforcement Telecommunications System (CLETS) check, Department of Motor Vehicles check, and Criminal History check. Gate clearance may be denied for the following reasons: the individual's presence in the institution presents a serious threat to security, the individual has been charged with a serious crime, inadequate information is available to establish positive identity of prospective individual, and/or the individual has deliberately falsified his/her

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identity. All persons entering the facilities must have a valid state driver's license or photo identification card on their person. Contractor must recover and return any State-issued identification card provided to Contractor's employee(s) upon their departure or termination and upon the termination of this Agreement.

12. Limitation of Liability. ~~CPR, CDCR, the State, or their employees shall not be liable to Contractor or its staff for injuries inflicted by inmates of the State. CDCR agrees to disclose to Contractor any statement(s) known to CDCR staff made by any inmate that indicates violence may result in any specific situation.~~

13. Tuberculosis Testing. In the event that the services required under this Agreement will be performed within a prison facility, prior to the performance of contracted duties, Contractor's employees may be required to be examined or tested or medically evaluated for TB in an infectious or contagious stage, and at least once a year thereafter or more often as directed by CDCR. Contractor's employees may be required to furnish to CDCR, at no cost to CPR or CDCR, a Tuberculin Skin Test (TST) and evaluation, prior to assuming their contracted duties and annually thereafter, showing that Contractor's employees have been examined and found free of TB in an infectious stage.

14. Governing Law; State Required Terms and Conditions. This Agreement shall be governed by and construed under the laws of the State of California. Contractor understands and agrees that CDCR is obtaining Contractor's services for the benefit of the State of California and that Contractor shall be bound to the State's General Terms and Conditions and ~~Contractor Certification Clauses IT Personal Services Special Provisions~~ set forth at: <http://www.documents.dgs.ca.gov/ols/GTC-307.doc> www.documents.dgs.ca.gov/pd/modellang/GPIT0407.pdf and <http://www.documents.dgs.ca.gov/ols/CCC-307.doc> www.pd.dgs.ca.gov/modellang/ITModules.htm, except that all references to the "State" or the "Department of General Services" will mean CDCR. Contractor shall perform the Services in full compliance with such terms, conditions and certifications and any other applicable federal, state and local laws and regulations in effect at the time the Services are rendered.

15. Subcontractors. Any use of subcontractors must first be approved in writing by CDCR. A proposal to use subcontractors shall identify the subcontractors and include a description of tasks to be performed by the subcontractor and the amount of compensation to be paid. Contractor agrees to bind subcontractors to all applicable terms and conditions set forth in this Agreement. The CDCR shall have the right to revoke its prior approval of a subcontractor and replace such subcontractor as soon as possible. If the subcontractor's performance is materially deficient, good faith doubts exist concerning the subcontractor's ability to render future performance, or there have been material misrepresentations concerning the subcontractor.

16. Entire Agreement; Modification; Waiver. This Agreement, including its exhibits, constitute the entire agreement of the parties and ~~supersedes any and all prior or contemporaneous written or oral negotiations, correspondence, understandings and Agreements between the parties respecting the subject matter hereof.~~ No supplement, modification or amendment to this Agreement shall be binding unless executed in writing by both parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

17. Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Contractor shall not be entitled to assign or delegate any of its rights or obligations hereunder without the prior written consent of CDCR.

18. Execution. By their signature below, each of the following represent that they have authority to execute this Agreement and to bind the party on whose behalf their execution is made. This Agreement may be signed in counterparts, each complete set of which shall constitute an original.

19. Order of Precedence. In the event of any inconsistency between ~~this Consulting Services~~ the Agreement, the attachments, or other provisions which constitute this Agreement Contract, the following order of precedence shall apply: (a) the General Provisions – Information Technology

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(GSPD-401IT, effective 04/12/2007); (b) contract form (i.e., Purchase Order STD 65, Standard Agreement STD 213, etc.), and any amendments thereto; (c) information technology special provisions; (d) statement of work, including any specifications incorporated by attachment herein; and (e) all other attachments incorporated by reference herein (i.e., Contractor's response, dated MM/DD/YYYY, to CPR's 10/26/2009 Request for Proposal number 09-018-ITS [SIFTA Services], and CPR's Request for Proposal number 09-018-ITS dated 10/26/2009). this Consulting Services Agreement; (b) Attachments A through D; (c) Contractor's response, dated MM/DD/YYYY, to CPR's 10/26/2009 Request for Proposal number 09-018-ITS (Strategic Offender Management Systems [SOMS] Independent System Integrator Functional and Technical Assessment [SIFTA] Services); and (d) CPR's Request for Proposal number 09-018-ITS dated 10/26/2009.

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EXHIBIT A

SCOPE OF SERVICES

This Agreement is to procure consulting services from Contractor for CDCR's Strategic Offender Management Systems (SOMS). Contractor will conduct an independent functional and technical assessment of the SOMS system with a focus on services provided by the system integrator.

In addition to full implementation of the CPR's Request for Proposal (RFP) for SOMS Independent System Integrator Functional and Technical Assessment (SIFTA) Services (RFP 09-018-ITS), and Contractor's response thereto (~~i.e., Strategic Roadmap~~), both of which are incorporated herein by reference, Contractor services shall include, but are not limited to, all of the following:

Deliverables	Deliverable Overview	Due Date
Deliverable 1 – Project Management	Planning Documents.	With the Proposal and again 20 calendar days after contract award (to incorporate any State required changes).
Deliverable 2 – System Integrator Project Management Oversight	Sixteen (16) Quarterly Reports providing oversight of the System Integrator Project Management Processes and Planning. This is part of the System Integrator Project Management, Business Process (Change) Management and Quality Management Quarterly Critical Assessment Risk Report Deliverable.	Due at the month end, in the 3 rd calendar month after contract start (i.e., Contract start Jan. 29, 2010, first Quarterly report due Apr. 30, 2010).
Deliverable 3 – Business Process (Change) Management Oversight	Sixteen (16) Quarterly Reports providing oversight of Business Process (Change) Management. This is part of the System Integrator Project Management, Business Process (Change) Management and Quality Management Quarterly Critical Assessment Risk Report Deliverable.	Due at the month end, in the 3 rd calendar month after contract start (i.e., Contract start Jan. 29, 2010, first Quarterly report due Apr. 30, 2010).
Deliverable 4 – Knowledge Transfer & Training Oversight	Fifteen (15) Quarterly Reports providing oversight of Knowledge Transfer & Training.	Due at the month end, in the 5 th calendar month after contract start (i.e., Contract start Jan. 29, 2010, first Quarterly report due Jun. 30, 2010).
Deliverable 5 – System Design, Development, and Customization Oversight	Sixteen (16) Quarterly Reports providing oversight of System Design, Development and Customization.	Due at the month end, in the 3 rd calendar month after contract start (i.e., Contract start Jan. 5, 2010, first Quarterly report due Apr. 30, 2010).
Deliverable 6 –	Fifteen (15) Quarterly Reports	Due at the month end,

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Testing Oversight	providing oversight of Testing.	in the 4 th calendar month after contract start (i.e., Contract start Oct. 15, 2009, first Quarterly report due May 31, 2010).
Deliverable 7 – Implementation Oversight	Thirteen (13) Quarterly Reports providing oversight of System Implementation This task will be delivered as part of the Implementation, Production Support and Transition Quarterly Critical Risk Report Deliverable.	Due at the month end, in the 10 th calendar month after contract start (i.e., Contract start Jan. 29, 2010, first Quarterly report due Nov. 30, 2010)
Deliverable 8 – Security Assessment and Oversight	Four (4) Annual Reports providing an assessment and oversight of Solution Security.	Due at the month end, in the 9 th calendar month after contract start (i.e., Contract start Jan. 5, 2010, first Quarterly report due Oct. 31, 2010).
Deliverable 9 – Quality Management Oversight	Sixteen (16) Quarterly Reports providing oversight of Quality Management (not Quality Assurance). This is part of the System Integrator Project Management, Business Process (Change) Management and Quality Management Quarterly Critical Assessment Risk Report Deliverable.	Due at the month end, in the 3 rd calendar month after contract start (i.e., Contract start Jan. 5, 2010, first Quarterly report due Apr. 30, 2010).
Deliverable 10 – Production Support and Transition Oversight	Thirteen (13) Quarterly Reports providing oversight of Production Support and Transition This task will be delivered as part of the Implementation, Production Support and Transition Quarterly Critical Risk Report Deliverable.	Due at the month end, in the 10 th calendar month after contract start (i.e., Contract start Jan. 5, 2010, first Quarterly report due Nov. 30, 2010)
Deliverable 11 – <u>Special Studies</u>	<u>Twelve (12) Special Studies Reports will be delivered as ad-hoc studies requested by SOMS Project Director and any other study as requested by SOMS Project Director.</u>	<u>As requested.</u>

SPECIFIC DELIVERABLES

In addition to the above Services, Contractor shall provide all of the following project deliverables:

1. Project Management

- a. Develop a SIFTA Software Verification and Validation Plan (SVVP);
- b. Identify work-plan schedule for each task corresponding to the System Integrator (SI) schedule;
- c. Identify project milestones that map to SI's project milestones;

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- d. Determine software characteristics (e.g., criticality, risk, safety level, security level, desired performance, etc.), that define importance of the software, and all relevant features and/or SOMS scope;
- e. Determine software integrity level of the SOMS system and software;
- f. Determine minimum tasks for the software integrity level using IEEE 1012-2004 Table 2, the selected software integrity level scheme, and RFP requirements; and
- g. Identify staffing and staff management tasks.

2. System Integrator Project Management Oversight

- a. Verify and assess: 1) SOMS SI project management and organization; and 2) that lines of reporting and responsibility provide adequate technical and managerial oversight of project;
- b. Assess SOMS coordination, communication, and management to verify that agencies and departments are not working independently of one another, and are following communication plan;
- c. Verify that a project management plan is established and being followed;
- d. Evaluate the SOMS SI's project management plans and procedures to verify they are developed, communicated, implemented, monitored and complete;
- e. Evaluate project reporting plan and actual project reports to verify project status is accurately traced using project metrics;
- f. Verify SOMS milestone and deliverable completion dates are planned, monitored, and met;
- g. Verify existence and institutionalization of an appropriate project issue tracking mechanism that documents issues as they arise, enables communication of issues to proper stakeholders, documents a mitigation strategy, as appropriate, and tracks issue(s) to closure. This shall include, but not be limited to, technical and development efforts;
- h. Evaluate SOMS life-cycle development methodology or methodologies (i.e., waterfall, evolutionary spiral, rapid prototyping, incremental, etc.) to see if they are appropriate for the system being developed;
- i. Verify that a project risk management plan is created and being followed. Evaluate project risk management plans and procedures to verify risks are identified and quantified and mitigation plans are developed;
- j. Verify that a communication plan is created and being followed. Evaluate communication plans and strategies to verify that they support communications and work product sharing between all project stakeholders; and assess if communication plans and strategies are effective, implemented, monitored, and complete;
- k. Evaluate and make recommendations on project scheduling and estimating process(es) to ensure project budget and resources are adequate for work-breakdown structure and schedule;
- l. Review schedules to verify adequate time and resources are assigned for planning, development, review, testing, and rework; and
- m. Verify project's organizational structure supports training, process definition, independent quality assurance, configuration management, product evaluation, and any other functions critical for project success.

3. Business Process (Change) Management Oversight

- a. Evaluate change management plans and procedures to verify: 1) they are developed, communicated, implemented, monitored, and complete; and 2) resistance to change is anticipated and prepared for;
- b. Evaluate project's ability and plans to redesign business systems to achieve improvements in critical measures of performance such as cost, quality, service, and speed;

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- c. Verify reengineering plan has the strategy, management backing, resources, skills, and incentives necessary for effective change;
- d. Verify resistance to change is anticipated and prepared for using principles of change management at each step (e.g., excellent communication, participation, incentives), and having the appropriate leadership (e.g., executive pressure, vision, and actions) throughout the reengineering process.

4. Knowledge Transfer and Training Oversight

- a. Evaluate SI's knowledge transfer process(es), specifically the quality of knowledge transfer documentation provided to CDCR with what should be provided during knowledge transfer;
- b. Review and make recommendations on training provided to system users. Verify sufficient knowledge transfer for maintenance and operation of the new system;
- c. Evaluate source code walkthroughs to project staff;
- d. Verify developer training is technically adequate, appropriate for the development phase, and available at appropriate times;
- e. Evaluate training strategy, approach and planning;
- f. Evaluate training sessions and user responses;
- g. Evaluate project questionnaire and/or develop an independent questionnaire for user feedback;

5. System Design, Development, and Customization Oversight

- a. Conduct and monitor critical assessment of vital system functionality to identify extent of impact to internal and external functionality, should malfunctions occur;
- b. Review and provide critical analyses of all system development deliverables from prime contractor including, but not limited to, all of the following:
 - Requirements, design, training and implementation documentation;
 - Prime contractor developed source code for accuracy, completeness, use of agreed upon methods and tools; and
 - Application of formal configuration management;
- c. Verify and monitor system requirements traceability and implementation through design, code, implementation, test and training. This analysis shall be performed to ensure that business and system requirements are properly allocated to hardware and software requirements, and that the requirements are carried through to design, implementation, and testing;
- d. Participate in risk assessment sessions, review risk matrices, and mitigation plans;
- e. Evaluate development hardware configurations to determine performance is adequate to meet the needs of system development and if the hardware is maintainable, consistent, upgradeable, and compatible;
- f. Evaluate development software to determine if its capabilities are adequate to meet system development requirements and if software is maintainable, consistent, and upgradeable;
- g. Evaluate proposed system architecture including hardware, licensed software, database, application languages, communications, security, and other critical components to identify potential problems and risks in meeting anticipated/contractual performance requirements of the system including, but not limited to, response time(s) and maintainability;
- h. Verify that all system interfaces are exactly described, by medium and by function, including input/output control codes, data format, polarity, range, units, and frequency;
- i. Monitor changes in key system and application components during development lifecycle and update findings, conclusions, and recommendations accordingly;
- j. Evaluate performance modeling/capacity planning and related volume and stress testing

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performed, inclusive of technical, application, and data architectures;

- k. Monitor system development issue identification, documentation, and resolution processes and procedures;
- l. Verify configuration management process is satisfactory in terms of completeness and adequacy;
- m. Attend weekly project status meetings and prime contractor deliverable walkthroughs;
- n. Conduct monthly source code reviews to provide feedback on project supplied source code for adherence to standards and maintainability;
- o. Conduct monthly conversion program reviews and provide analyses, risk, and recommendations to the conversion effort;

6. Testing Oversight

- a. Monitor testing system issue/defect identification, documentation, and review resolution processes and procedures
- b. Review integration, system, and acceptance test plan documents to identify issues and gaps, and make recommendations to ensure tests cover all system requirements, both draft and final;
- c. Review integration, system, and acceptance test scripts to identify issues and gaps, and make recommendations that ensure test scripts cover all system requirements, both draft and final;
- d. Witness integration, system, performance and acceptance testing to ensure tests are executed according to test plans and test scripts;
- e. Verify and monitor system requirements traceability through design, code, implementation, test and training, and verify its implementation. This analysis shall be performed to ensure that business and system requirements are properly allocated to hardware and software requirements, and that requirements are carried through to design, implementation, and testing;
- f. Verify performance testing (e.g. timing, response time and throughput) to satisfy user needs;
- g. Recommend ad hoc tests during test execution that specifically address a unique scenario not included in test plan. Contractor may recommend selected tests to be independently monitored by EDS. As approved, Contractor must provide a qualified staff to monitor tests and independently prepare test outcome reports.

7. Implementation Oversight

- a. Review and evaluate implementation planning effort(s);
- b. Review and evaluate implementation staffing levels;
- c. Review and evaluate phase implementation readiness;
- d. Review and evaluate site implementation readiness;
- e. Evaluate system implementation defect tracking;
- f. Monitor implementation activities and identify risk or issues;
- g. Review and evaluate implementation support process(es); and
- h. Evaluate conversion tasks and conversion risks to implementation.

8. Security Assessment and Oversight

- a. Review SOMS Project facilities for physical security risks. Bidder must identify issues and make recommendations to improve physical security of the facility;
- b. Review SOMS related information assets for security risks (e.g., configuration check-lists, computer device hardening, etc.). Bidder must also identify issues and make recommendations to improve security of those assets;
- c. Conduct an NIST 800-18 security assessment covering the complete security assessment model, as appropriate, and relevant to any SOMS computer security site, system, and subsequent

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computer security audit that may be conducted in the future; and

- d. Conduct an NIST 800-30 risk assessment covering the complete risk assessment model as described in NIST 800-30 and relevant to any SOMS risk assessment audits that may be conducted internally in the future.

9. Quality Management Oversight

- a. Evaluate how SI provides quality management in the day-to-day operations of project;
- b. Provide detailed analyses of the quality management approach and how the SI ensures quality management processes, procedures, etc.; and
- c. Provide ongoing detailed recommendations on ways to improve quality in day-to-day operations of the project.

10. Production Support and Transition Oversight

- a. Review and evaluate transition plans for the State to assume system operations and maintenance;
- b. Monitor transition activities and evaluate outcomes; and
- c. Evaluate operational recovery plans and processes including backup, disaster recovery, and day-to-day operations to verify if processes are being followed.

11. Special Studies

- a. Perform ad-hoc studies requested by SOMS Project Director; and
- b. Any other study as requested by SOMS Project Director.

12. Ongoing Coordination with CDCR Project Management Office (PMO)

- a. Contractor shall provide a minimum of 40-hours per month of overall project coordination including, but not limited to, meetings at least weekly with the designated CDCR Contract Manager or designee; and
- b. Attendance by Contractor's Subject Matter Experts (SMEs) at select ~~Imaging Services Steering Oversight Committee~~ SOMS meetings for dissemination of project information, Questions and Answers (Q&A) activities, etc.

13. Other Expectations

- a. Coordinate with CDCR ~~Contract Manager~~ Project Director or designee to facilitate a kick-off meeting for the project in Sacramento, CA;
- b. Contractor is required to submit the Darfur Contracting Act Certification upon execution of the ensuing Agreement.
- c. Present project deliverables and analyses by the project milestone dates, and follow up with oral and/or written presentations to the ~~Imaging Services Steering Oversight Committee~~ CDCR Project Director during selected regular meetings.

B. IMPLEMENTATION TIMELINE

At the CDCR's option, this contract may be extended for up to an additional one-year period on a month-to-month basis.

Contractor shall be available to commence work immediately upon execution of the Agreement.

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

1. INVOICING AND PAYMENT:

For services satisfactorily rendered, and upon receipt and approval of invoices, CDCR agrees to reimburse Contractor for said services on a ~~time and materials~~ deliverable basis, no more than monthly in arrears and in accordance with Exhibit B (Budget Detail and Payment Provisions), Item 5 (Cost Breakdown). Reimbursement for services rendered by Contractor shall be on a deliverable basis, and subject to CDCR acceptance. Contractor shall provide a brief written status report on a monthly basis ~~with each invoice that specifies progress and risk(s) the work completed by consultant(s), the number of hours performed for each task and/or deliverable performed, the individual providing the services and any outstanding issues and concerns that need to be addressed.~~

All invoices shall be submitted with all supporting documentation that properly details all charges, expenses, ~~direct and indirect costs~~. All invoices submitted by Contractor to CDCR must identify the Agreement Number. Any invoices submitted without the above referenced information may be returned to Contractor for re-processing.

Contractor shall address and submit all invoices to the following:

~~Chief Information Officer~~

~~P.O. Box 4038, Suite 225~~

~~Sacramento, CA 95812-4038~~

Leisa Rackelmann, Project Manager

SOMS Project

1920 Alabama Ave.

Rancho Cordova, CA 95742

2. PROMPT PAYMENT CLAUSE:

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

3. BUDGET CONTINGENCY CLAUSE:

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

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to Contractor to reflect the reduced amount.

4. TRAVEL AND MISCELLANEOUS EXPENSES:

Travel outside the greater Sacramento metropolitan area will be necessary as CDCR has institutions located throughout the State. Any reimbursable out-of-state travel and/or other expenses must be approved in advance by the PMO Director or designee and itemized in Contractor's invoice. Travel reimbursement may not exceed the rates, terms, and conditions that apply to comparable State employees, in accordance with travel rules and regulations, as specified in California Code of Regulations (CCR), Title 2, Division 1, Chapter 3, and/or the California Department of Personnel Administration (DPA), Sections 599.619 through 599.631. Travel expenses shall be submitted on a State of California Travel Expense Claim (Std. 262) or an authorized departmental travel claim form.

No travel or parking within the Sacramento metropolitan area will be paid. Only approved business travel originating at the CDCR ~~or Contractor's Satellite Office~~ may be reimbursed. Travel from a contractor's home or business to the primary CDCR project site is not reimbursable, unless otherwise expressly authorized by the PMO Director or designee.

Contractor agrees to follow the timelines and cost proposals as submitted within their response to the RFP entitled "Request for Proposals for Enterprise Imaging and Radiology Professional Management Services for California Adult Prison Facilities", dated October 6, 2008 "Request for Proposal (RFP) 09-018-ITS, Strategic Offender Management System (SOMS) Independent System Integrator Functional and Technical Assessment (SIFTA) Services", dated 10/26/2009.

5. COST BREAKDOWN:

Deliverable 1: Project Management

Sub-Deliverables and/or Tasks	Key Staff	Hours*	Hourly Rate	Total by Resource
<ul style="list-style-type: none"> Software Verification and Validation Plan (SVVP) SVVP Workplan Schedule Staff Management Plan 	Team Lead			
	Technical Lead			
	Functional Lead			
	Total			

Deliverable 2: System Integrator Project Management

Sub-Deliverables and/or Tasks	Key Staff	Hours*	Hourly Rate	Total by Resource
<ul style="list-style-type: none"> Sixteen (16) Quarterly Reports providing oversight of the System Integrator (SI) 	Team Lead			
	Technical Lead			
	Functional Lead			
	Total			

Deliverable 3: Business Process (Change) Management

Sub-Deliverables and/or Tasks	Key Staff	Hours*	Hourly Rate	Total by Resource
<ul style="list-style-type: none"> Sixteen (16) Quarterly Reports providing oversight of the Business Process (Change) Management 	Team Lead			
	Technical Lead			
	Functional Lead			
	Total			

Deliverable 4: Knowledge Transfer & Training

Sub-Deliverables and/or Tasks	Key Staff	Hours*	Hourly Rate	Total by Resource
<ul style="list-style-type: none"> Fifteen (15) Quarterly Reports providing oversight of Knowledge Transfer and Training 	Team Lead			
	Technical Lead			
	Functional Lead			
	Total			

Deliverable 5: System Design, Development and Customization

Sub-Deliverables and/or Tasks	Key Staff	Hours*	Hourly Rate	Total by Resource
<ul style="list-style-type: none"> Sixteen (16) Quarterly Reports providing oversight of System Design, Development, and Customization 	Team Lead			
	Technical Lead			
	Functional Lead			
			Total	

Deliverable 6: Testing

Sub-Deliverables and/or Tasks	Key Staff	Hours*	Hourly Rate	Total by Resource
<ul style="list-style-type: none"> Fifteen (15) Quarterly Reports providing oversight of Testing 	Team Lead			
	Technical Lead			
	Functional Lead			
			Total	

Deliverable 7: Implementation

Sub-Deliverables and/or Tasks	Key Staff	Hours*	Hourly Rate	Total by Resource
<ul style="list-style-type: none"> Thirteen (13) Quarterly Reports providing oversight of System Implementation. 	Team Lead			
	Technical Lead			
	Functional Lead			
			Total	

Deliverable 8: Security Assessment

Sub-Deliverables and/or Tasks	Key Staff	Hours*	Hourly Rate	Total by Resource
<ul style="list-style-type: none"> Four (4) Annual Reports providing oversight of Solution Security. 	Team Lead			
	Technical Lead			
	Functional Lead			
			Total	

Deliverable 9: Quality Management

Sub-Deliverables and/or Tasks	Key Staff	Hours*	Hourly Rate	Total by Resource
<ul style="list-style-type: none"> Sixteen (16) Quarterly Reports providing oversight of Quality Management 	Team Lead			
	Technical Lead			
	Functional Lead			
			Total	

Deliverable 10: Production Support and Transition

Sub-Deliverables and/or Tasks	Key Staff	Hours*	Hourly Rate	Total by Resource
<ul style="list-style-type: none"> Thirteen (13) Quarterly Reports providing oversight of Production Support and Transition. 	Team Lead			
	Technical Lead			
	Functional Lead			
			Total	

Deliverable 11: Special Studies

Sub-Deliverables and/or Tasks	Key Staff	Hours*	Hourly Rate	Total by Resource
<ul style="list-style-type: none"> Twelve (12) Quarterly Reports providing ad-hoc studies and any other study as requested by SOMS Project Director. 	Team Lead			
	Technical Lead			
	Functional Lead			
			Total	

Cost Breakdown Summation

Deliverable	Primary Focus	Total Hours	Amount
Deliverable 1	Project Management		
Deliverable 2	System Integrator Project Management Oversight		
Deliverable 3	Business Process (Change) Management Oversight		
Deliverable 4	Knowledge Transfer and Training Oversight		
Deliverable 5	System Design, Development, and Customization Oversight		
Deliverable 6	Testing Oversight		
Deliverable 7	Implementation Oversight		
Deliverable 8	Security Assessment Oversight		
Deliverable 9	Quality Management Oversight		
Deliverable 10	Product Support and Transition Oversight		
Deliverable 11	Special Studies		
	Sub-Total		
	Travel		
	Maximum Amount Payable	TOTAL	

* Note: All use of time in this exhibit is for reference purposes only. This agreement is a purely deliverables based agreement, and will not be reimbursed on a time and materials basis.

EXHIBIT C

CONTRACTOR INSURANCE

Insurance Requirements:

Prior to Contractor commencing performance of Services, ~~and continuing for a period of at least three (3) years following completion of Contractor's Services,~~ Contractor shall, at its sole cost and expense, carry and maintain employer's liability insurance, comprehensive general liability insurance, professional liability insurance and automobile liability insurance (including coverage for owned, non-owned and hired autos) on an ~~"occurrence"~~ "per claim" basis. Such insurance shall conform to the following requirements:

1. Workers' Compensation. Statutory Workers' Compensation covering all employees and complying with all laws of California, and Employer's Liability Insurance with minimum limit of One Million Dollars (\$1,000,000).

2. Commercial General Liability. Commercial General Liability providing for a limit of not less than One Million Dollars (\$1,000,000) per ~~occurrence~~ claim and Two Million Dollars (\$2,000,000) aggregate for bodily injury or property damage combined.

3. Professional Liability. Professional Liability insurance including coverage for any errors or omissions caused by negligence in the performance of duties under this Agreement, providing for a limit of not less than One Million Dollars (\$1,000,000) per ~~occurrence~~ claim and Three Million Dollars (\$3,000,000) aggregate.

4. ~~Automobile.~~ Commercial Automobile Liability insurance coverage in the sum not less than One Million Dollars (\$1,000,000) per accident for bodily injury and property damage combined including coverage for owned, non-owned, and hired automobiles.

Contractor shall supply CDCR with certificates evidencing such insurance, and showing CDCR and the State of California (and any other party identified as an Indemnified party) as additional insured parties under the comprehensive general liability insurance and automobile insurance policies with respect to the Services and providing for thirty (30) days' written notice to CDCR prior to cancellation or modification thereof. ~~Contractor's insurance shall be primary, with any insurance maintained by an additional insured party being non-contributory.~~ Certificates evidencing the required insurance as stipulated shall be presented prior to any payments made pursuant to this Agreement.

EXHIBIT D

BUSINESS ASSOCIATE AGREEMENT

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

WHEREAS, Business Associate acknowledges that the fulfillment of the its obligations under this Agreement may necessitate the exchange of, or access to, data including individual identifiable health information; and,

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

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

ARTICLE 1 DEFINITIONS

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

- 1.1 "HHS Transaction Standard Regulation" means the Code of Federal Regulations ("CFR") at Title 45, Sections 160 and 162.
- 1.2 "Individual" means the subject of protected health information (PHI) or, if deceased, his or her personal representative.
- 1.3 "Parties" shall mean the Covered Entity and Business Associate. (Covered Entity and Business Associate, individually, may be referred to as a "Party".)
- 1.4 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 1.5 "PHI" shall have the same meaning as the term "protected health information" in 45 CFR §164.501, limited to the information created or received by Business Associate from or on behalf of the Covered Entity.
- 1.6 "Required By Law" shall have the same meaning as "required by law" in 45 CFR §164.501.
- 1.7 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

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

ARTICLE 2

CONFIDENTIALITY

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

- (a) not to use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law;
- (b) to establish, maintain, and use appropriate safeguards to prevent use or disclosure of the PHI other than as permitted herein;
- (c) to report to Covered Entity any use, access or disclosure of the PHI not provided for by this Agreement, or any misuse of the PHI, including but not limited to systems compromises of which it becomes aware and to mitigate, to the extent practicable, any harmful effect that is known to Business Associate as a result thereof. Business Associate shall be responsible for any and all costs (including the costs of Covered Entity) associated with mitigating or remedying any violation of this Agreement;
- (d) to enforce and maintain appropriate policies, procedures, and access control mechanisms to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. The access and privileges granted to any such agent shall be the minimum necessary to perform the assigned functions;
- (e) to provide access, at the request of Covered Entity, and in the time and manner reasonable designated by Covered Entity, to PHI in a Designated Record Set (as defined in the Privacy Rule), to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524;
- (f) to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner reasonably requested by Covered Entity.
- (g) to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner reasonably requested by Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (h) to document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528. Said documentation shall include, but not be limited to, the date of the disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure. Said documentation shall be made available to Covered Entity upon request.
- (i) to provide to Covered Entity or an Individual, in a time and manner reasonably requested by Covered Entity, information collected in accordance with Section 2.1(h) above to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.
- (j) to promptly notify Covered Entity of all actual or suspected instances of deliberate unauthorized attempts (both successful and unsuccessful) to access PHI. Such notice shall be made to Covered Entity by telephone as soon as Business Associate becomes aware of the unauthorized attempt, and this telephone notification shall be followed within two (2) calendar days of the discovery of the unauthorized attempt by a written report to Covered Entity from Business Associate. Business Associate shall, at the same time, report to Covered Entity any remedial action taken, or proposed to be taken, with respect to such unauthorized attempt. Covered Entity shall have the discretion to determine whether or not any such remedial action is sufficient, and all such remedial action shall be at Business Associate's expense.

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- (k) to maintain and enforce policies, procedures and processes to protect physical access to hardware, software and/or media containing PHI (e.g., hardcopy, tapes, removable media, etc.) against unauthorized physical access during use, storage, transportation, disposition and /or destruction.
- (l) to ensure that access controls in place to protect PHI and processing resources from unauthorized access are controlled by two-factor identification and authentication: a user ID and a Token, Password or Biometrics.
- (m) to implement, use and monitor its compliance with appropriate technological, administrative and physical safeguards to prevent the use or disclosure of PHI other than as permitted by this Agreement. Business Associate shall provide Covered Entity with evidence of such safeguards upon Covered Entities request. Covered Entity has the right to determine, in its sole discretion, whether such safeguards are appropriate, and to require any additional safeguards it deems necessary.
- (n) In the event that Business Associate is served with legal process (e.g. a subpoena) or request from a governmental agency (e.g. the Secretary) that potentially could require the disclosure of PHI, Business Associate shall provide prompt (i.e., within twenty-four (24) hours) written notice of such legal process (including a copy of the legal process served) to the designated person at the Covered Entity. In addition, Business Associate shall not disclose the PHI without the consent of Covered Entity unless pursuant to a valid and specific court order or to comply with a requirement for review of documents by a governmental regulatory agency under its statutory or regulatory authority to regulate the activities of either party.
- (o) to submit to periodic audits by Covered Entity verifying Business Associate's compliance with appropriate technological, administrative and physical safeguards to prevent the use or disclosure of PHI other than as permitted by this Agreement, as well as compliance with the terms and conditions pursuant to this Agreement and compliance with state and federal laws and regulations. Audit review may be undertaken directly by the Covered Entity or by third parties engaged by the Covered Entity. Business Associate shall cooperate fully with Covered Entity or any such third party in connection with such audits.

2.2 Disclosures Required By Law.

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

2.3 Specific Use and Disclosure Provisions.

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

2.4 Obligations of Covered Entity.

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

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- (b) Covered Entity will notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosures of PHI.
- (c) Covered Entity will notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (d) For any PHI received by Covered Entity from Business Associate on behalf of a third party or another covered entity, Covered Entity will be bound to the obligations and activities of Business Associate enumerated in Section 2.1 as if and to the same extent Covered Entity was the named Business Associate hereunder.

2.5 Permissible Requests by Covered Entity.

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

2.6 Policy and Procedure Review.

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

**ARTICLE 3
SECURITY**

3.1 Security Procedures.

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

- (a) require its agents and subcontractors to provide security for all data that is electronically exchanged between Covered Entity and Business Associate;
- (b) provide, utilize, and maintain equipment, software, services and testing necessary to assure the secure and reliable transmission and receipt of data containing PHI;
- (c) maintain and enforce security management policies and procedures and utilize mechanisms and processes to prevent, detect, record, analyze, contain and resolve unauthorized access attempts to PHI or processing resources;
- (d) maintain and enforce policies and guidelines for workstation use that delineate appropriate use of workstations to maximize the security of data containing PHI;
- (e) maintain and enforce policies, procedures and a formal program for periodically reviewing its processing infrastructure for potential security vulnerabilities;
- (f) implement and maintain, and require its agents and subcontractors to implement and maintain, appropriate and effective administrative, technical and physical safeguards to protect the security, integrity and confidentiality of data electronically exchanged between Business Associate and Covered Entity, including access to data as provided herein. Each Party and its agents and subcontractors shall keep all security measures current and shall document its security measures implemented in written policies, procedures or guidelines, which it will provide to the other Party upon the other Party's request.

ARTICLE 4
EXCHANGE OF STANDARD TRANSMISSIONS

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

- (a) it will not change any definition, data condition or use of a data element or segment as proscribed in the HHS Transaction Standard Regulation.
- (b) it will not add any data elements or segments to the maximum denied data set as proscribed in the HHS Transaction Standard Regulation.
- (c) it will not use any code or data elements that are either marked "not used" in the HHS Standard's implementation specifications or are not in the HHS Transaction Standard's implementation specifications.
- (d) it will not change the meaning or intent of any of the HHS Transaction Standard's implementation specifications.

4.2 Incorporation of Modifications to HHS Transaction Standards.

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

4.3 Code Set Retention.

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

4.4 Business Associate Obligations.

- (a) Business Associate shall not submit duplicate transmissions unless so requested by Covered Entity.
- (b) Business Associate shall only perform those transactions, which are authorized by Covered Entity. Furthermore, Business Associate assumes all liability for any damage, whether direct or indirect, to the electronic data or to Covered Entity's systems caused by Business Associate's unauthorized use of such transactions.
- (c) Business Associate shall hold Covered Entity harmless from any claim, loss or damage of any kind, whether direct or indirect, whether to person or property, arising out of or related to (1) Business Associate's use or unauthorized disclosure of the electronic data; or (2) Business Associate's submission of data, including but not limited to the submission of incorrect, misleading, incomplete or fraudulent data.
- (d) Business Associate agrees to maintain adequate back-up files to recreate transmissions in the event that such recreations become necessary. Back-up tapes shall be subject to this Agreement to the same extent as original data.
- (e) Business Associate agrees to trace lost or indecipherable transmissions and make reasonable efforts to locate and translate the same. Business Associate shall bear all costs associated with the recreation of incomplete, lost or indecipherable transmissions if such loss is the result of an act or omission of Business Associate.
- (f) Business Associate shall maintain, for seven (7) years, true copies of any source documents from which it produces electronic data.

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- (g) Except encounter data furnished by Business Associate to Covered Entity, Business Associate shall not (other than to correct errors) modify any data to which it is granted access under this Agreement or derive new data from such existing data. Any modification of data is to be recorded, and a record of such modification is to be retained by Business Associate for a period of seven (7) years.
- (h) Business Associate shall not disclose security access codes to any third party in any manner without the express written consent of Covered Entity. Business Associate furthermore acknowledges that Covered Entity may change such codes at any time without notice. Business Associate shall assume responsibility for any damages arising from its disclosure of the security access codes or its failure to prevent any third party use of the system without the express written consent of Covered Entity.
- (i) Business Associate shall maintain general liability coverage, including coverage for general commercial liability, for a limit of not less than one million dollars, as well as other coverage as Covered Entity may require compensating any parties damaged by Business Associate's negligence. Business Associate shall provide evidence of such coverage in the form of a certificate of insurance and agrees to notify Covered Entity immediately of any reduction or cancellation of such coverage.
- (j) Business Associate agrees to conduct testing with Covered Entity to ensure delivery of files that are HIPAA-AS Compliant and to accommodate Covered Entity's specific business requirements.

ARTICLE 5 MISCELLANEOUS

5.1 Indemnification.

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

5.2 Term and Termination.

- (a) **Term.** The Term of this Business Associate Agreement shall be effective as of the first date of commencement of services under this entire agreement, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (b) **Termination for Cause.** Upon a material breach by Business Associate of this Business Associate Agreement, Covered Entity may (i) terminate this Business Associate Agreement; (ii) permit Business Associate to cure the breach; (iii) report the violation to the Secretary; and/or (iv) require Business Associate to take such other action as Covered Entity may request, at Business Associate's expense.

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(c) Effect of Termination.

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

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

5.3 Injunctive Relief.

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

5.4 Regulatory References.

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

5.5 Amendment.

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

5.5 Survival.

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

5.5 Limitation of Damages.

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

5.5 Interpretation.

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

5.5 Third Party Beneficiary

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