



Los Angeles County  
Board of Supervisors

October 16, 2012

Gloria Molina  
First District

Mark Ridley-Thomas  
Second District

Zev Yaroslavsky  
Third District

Don Knabe  
Fourth District

Michael D. Antonovich  
Fifth District

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF STANDARD AGREEMENT WITH THE STATE  
DEPARTMENT OF  
CORRECTIONS AND REHABILITATION FOR ENROLLMENT AND  
CLAIMING  
FOR ELIGIBLE LOW INCOME HEALTH PROGRAM PATIENT-INMATES  
(ALL SUPERVISORIAL DISTRICTS)  
(3 VOTES)**

Mitchell H. Katz, M.D.  
Director

Hal F. Yee, Jr., M.D., Ph.D.  
Chief Medical Officer

Christina Ghaly, M.D.  
Deputy Director, Strategic Planning

313 N. Figueroa Street, Suite 912  
Los Angeles, CA 90012

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[www.dhs.lacounty.gov](http://www.dhs.lacounty.gov)

*To ensure access to high-quality,  
patient-centered, cost-effective health  
care to Los Angeles County residents  
through direct services at DHS facilities  
and through collaboration with  
community and university partners.*

**SUBJECT**

Request approval to execute a Standard Agreement with the State of California Department of Corrections and Rehabilitation for the Department of Health Services to enroll eligible State prison patient-inmates into the Low Income Health Program claim for their care and be paid for these activities.

**IT IS RECOMMENDED THAT THE BOARD:**

1. Authorize the Director of Health Services (Director), or his designee, to sign Standard Agreement No. ICHC.11181, with the State of California Department of Corrections and Rehabilitation (CDCR), effective upon execution by the CDCR, following Board approval, for the period October 1, 2011 through June 30, 2014, under which the Department of Health Services (DHS) will enroll eligible State prison patient-inmates in the Low Income Health Program (LIHP), administered by DHS as the Healthy Way LA Health Care Initiative (HWLA) Program, claim federal financial participation for inpatient hospital services provided to such individuals off state correctional institution grounds (pursuant to Penal Code Section 5072 and Welfare and Institutions Code Section 14053.7), and receive reimbursement for its efforts in the amount not to exceed \$71,000 for the entire term.



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2. Delegate authority to the Director, or his designee, to execute, any future Standard Agreements from CDCR for enrolling eligible State prison patient-inmates in the HWLA program through June 30, 2014, following review and approval by County Counsel and notification to the Board and Chief Executive Office (CEO).
3. Delegate authority to the Director, or his designee, to execute, any future amendment(s) to the Standard Agreement(s) with CDCR: 1) that are required by CDCR and that are substantially similar to the purpose and scope; and/or 2) that provide additional funding through June 30, 2014, on the condition that any amendment(s) is approved prior to execution by County Counsel, and notification is given to the Board and CEO.
4. Approve and instruct the Chair to sign the attached Resolution, Attachment A, to approve the County's Agreement with CDCR and authorize the Director, or his designee, to execute future: Standard Agreements with CDCR to provide enrollment for eligible State prison patient-inmates identified by Department of Health Care Services (DHCS) in the HWLA program for inpatient hospital services provided off state correctional institution grounds (pursuant to Penal Code Section 5072 and Welfare and Institutions Code Section 14053.7); and Amendments to those Agreements that require non-substantial changes or add funding, if necessary through June 30, 2014.

#### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

State law allows eligible state prison inmates to be enrolled in an LIHP for purposes of receiving inpatient hospital services provided outside of the prisons, so that the State may draw down federal financial participation associated with paying for those services. Enrollment of these individuals, however, has to be done by each LIHP, and the claim for federal funds must come through the County, not the State. Approval of the first recommendation will allow the Director, or his designee, to execute Standard Agreement No. ICHC.11181, Exhibit I, under which DHS will enroll eligible State prison patient-inmates in the HWLA program, for inpatient hospital services provided off state correctional institution grounds (pursuant to Penal Code Section 5072 and Welfare and Institutions Code Section 14053.7) and to claim federal financial participation related to those services for the benefit of CDCR. For this work, DHS will receive a fee per enrollment and reimbursement of its set up costs, in an amount not to exceed \$71,000 for the entire term. The County has been in negotiations with for the State in connection with this agreement for a substantial period of time. It is the State's desire that this agreement be effective October 1, 2011 to allow them to maximize their receipt of federal funding. The State provided the final revised Agreement in late August 2012. Therefore, we are now presenting to the Board for approval.

Approval of the second recommendation will allow the Director, or his designed, to execute any future Standard Agreements from CDCR for the enrollment and claiming related to eligible State prison patient-inmates, identified by the DHCS, in the HWLA Program through June 30, 2014, upon review and approval by County Counsel and notification to the Board and CEO.

Approval of the third recommendation will allow the Director, or his designee, to execute any future Amendments to the Standard Agreement from CDCR, to: 1) make changes required by CDCR that are substantially similar to the purpose and scope of the present Agreement and/or that provide additional funding through June 30, 2014, upon review and approval by County Counsel and notification to the Board and CEO.

Approval of the fourth recommendation will instruct the Chair to sign the attached Resolution, Attachment A, as required by the State, that authorizes the Director, or his designee, to sign Standard Agreement ICHC.11181, and to execute future: Standard Agreements with CDCR to enroll eligible State prison patient-inmates identified by DHCS in HWLA for inpatient hospital services provided off state correctional institution grounds (pursuant to Penal Code Section 5072 and Welfare and Institutions Code Section 14053.7) and claiming for such services; and Amendments to those Agreements that require non-substantial changes or add funding, if necessary, through June 30, 2014.

### **Implementation of Strategic Plan Goals**

The recommended action(s) supports Goal 1, Operational Effectiveness of the County's Strategic Plan.

### **FISCAL IMPACT/FINANCING**

The Agreement provides up to \$71,000 in revenue, which includes a one-time service charge of the non-federal share of allowable administrative costs related to establishing the processes for enrolling this special population, not to exceed the amount of \$5,000 and a processing fee of \$10.00 per patient-inmate enrollee, to the County to compensate DHS its work under this program through June 30, 2014.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

Penal Code Section 5072 and Welfare and Institutions Code Section 14053.7 remove the restriction barring state prison inmates from enrollment into Low Income Health Programs for purposes of receiving acute inpatient hospital services provided off of state correctional institutional grounds. As a result, CDCR has the opportunity to receive federal reimbursement for certain expenditures it incurs for inpatient services. However, for it to do so, the inmates must be properly enrolled, which must be done by each County LIHP. Further, the LIHP must include the State's expenditures in its claim. Thus, an agreement between CDCR and each LIHP is necessary for CDCR to receive a benefit from the legislative change.

On December 14, 2010, the Board authorized the Director, acting on behalf of the County, to participate in the new California 1115 Waiver and its LIHP. The Board also authorized the Director to expand HWLA in accordance with the Waiver's terms. DHS received approval of its LIHP application on April 12, 2011, and executed an agreement with DHCS to act as a LIHP effective July 1, 2011.

Under proposed Standard Agreement No. ICHC.11181, DHS will enroll eligible State prison patient-inmates into the County's HWLA program. DHCS will be responsible for determining the eligibility of such individuals, and will notify DHS who should be enrolled. DHS will have no responsibility for providing or paying for covered services for these individuals. Rather, California Correctional Health Services, which is responsible for State prison health care, will arrange and pay for the acute inpatient hospital services that these individuals receive. It will then notify DHS of the related expenditures, and certify them. DHS will include all certified payment amounts in its claim under the LIHP for federal financial participation, and DHCS will pay the resulting federal funds directly to CDCR. State law protects the County from any financial liability associated with its claiming for State

prison inmates.

The Agreement may be terminated by the County upon a 30 days prior written notice.

County Counsel has reviewed and approved Standard Agreement No. ICHC.11181, Exhibit I, and the Board Resolution, as to form.

**CONTRACTING PROCESS**

Not applicable.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

As the County is acting in a purely administrative capacity, and will be reimbursed an amount approximating its costs, this should have no impact on current service levels.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mitchell Katz". The signature is written in a cursive, somewhat stylized font.

Mitchell H. Katz, M.D.

Director

MHK:lb

Enclosures

c: Chief Executive Office  
County Counsel  
Executive Office, Board of Supervisors

RESOLUTION

The Board of Supervisors of the County of Los Angeles, at the meeting identified below, approved contracting with the State of California, Department of Corrections and Rehabilitation, for the enrollment of eligible state prison patient-inmates into the County's Low Income Health Program, known as Healthy Way LA Health Care Initiative Program and for the claiming of federal funds.

This resolution authorizes the Director of Health Services, or his designed, to sign Agreement No. ICHC.11181, any future Agreement(s) and any subsequent Amendments to Agreement No. ICHC.11181 or to any future Agreements that require minor changes or to add funding, if necessary, for these or related services between the County of Los Angeles and the State of California, Department of Corrections through June 30, 2014.

The foregoing resolution was, on the \_\_\_\_th day of October, 2012, adopted by the Board of Supervisors of the County of Los Angeles.

COUNTY OF LOS ANGELES

By \_\_\_\_\_  
Chair, Board of Supervisors of  
Los Angeles County

Attest:

SACHI HAMAI, Executive Officer-Clerk  
Of the Board of Supervisors of the  
County of Los Angeles

By \_\_\_\_\_  
Deputy

APPROVED AS TO FORM  
BY COUNTY COUNSEL

By \_\_\_\_\_  
Deputy

STATE OF CALIFORNIA  
**STANDARD AGREEMENT**

**EXHIBIT I**

STD 213 (Rev 06/03)

AGREEMENT NUMBER ICHC.11181
REGISTRATION NUMBER

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

STATE AGENCY'S NAME

California Department of Corrections and Rehabilitation

CONTRACTOR'S NAME

Los Angeles County

2 The term of this Agreement is: October 1, 2011 through June 30, 2014

3. The maximum amount of this Agreement is: \$71,000.00  
 Seventy-One Thousand Dollars and Zero Cents

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

Exhibit A – Scope of Work	1 page
Exhibit A-1 – Detailed Scope of Work	3 page(s)
Exhibit B – Budget Detail and Payment Provisions	2 page(s)
Exhibit C* – General Terms and Conditions	<u>GTC 610*</u>
Exhibit D – Special Terms and Conditions	2 page(s)
Exhibit E – Data and Security	11 page(s)
Attachment A – Notification of Breach (4/10)	4 page(s)
Attachment B – (Sample Invoice)	1 page

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

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

<b>CONTRACTOR</b>		<b>California Department                  of General Services                  Use Only</b>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, Los Angeles County		
BY (Authorized Signature) 	DATE SIGNED(Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS 313 N. Figueroa Street, Room 909 Los Angeles, CA 90012		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME California Department of Corrections and Rehabilitation		
BY (Authorized Signature) 	DATE SIGNED(Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Terrie Reese, Staff Services Manager I		
ADDRESS P.O. Box 4038 Administrative Support Services/Office of Procurement Services Sacramento, CA 95812-4038		

Exempt SCM 4.04

**Scope of Work**

1. The California Department of Corrections and Rehabilitation's/California Correctional Health Care Services (CCHCS) and the Contractor agree, the Contractor will enroll eligible patient-inmates identified by the Department of Health Care Services (DHCS) in the Low Income Health Program (LIHP) operated by Contractor for inpatient hospital services provided off state correctional institution grounds, pursuant to Penal Code Section 5072 and Welfare and Institutions Code Section 14053.7.
2. The services shall be performed at Contractor's offices located at 313 N. Figueroa Street, Room 909, Los Angeles, CA 90012.
3. The services shall be provided during normal business hours of 8:00 am to 5:00 pm, Monday through Friday with the exception of weekends and holidays.
4. The project representatives during the term of this agreement will be:

Contract Manager	Project Representative
State Agency: CCHCS – Healthcare Invoice Data and Provider Services Branch	Contractor:
Name: Jennifer Kammerer-Pulley	Name:
Phone: (916) 648-8183	Phone:
E-mail: <i>jennifer.kammerer-pulley@cdcr.ca.gov</i>	E-mail:
Fax: (916) 648-8394	Fax:
Address: 3701 N. Freeway Sacramento, CA 95834	Address:

Direct all contract inquiries to:

Contract Analyst	Contractor Representative
State Agency: CCHCS – California Correctional Health Care Services	Contractor: Los Angeles County
Section/Unit: CCHCS – Procurement Services	Section/Unit: Low Income Health Program
Attention: Sherrell Edison	Attention: Allan Wecker
Address: P.O. Box 4038, Suite 330 Sacramento, CA 95814	Address: 313 N. Figueroa Street, Rm 909, Los Angeles, CA 90012
Phone: (916) 322-6702	Phone: (213) 240-7882
E-mail: <i>Sherrell.Edison@cdcr.ca.gov</i>	E-mail: <i>awecker@dhs.lacounty.gov</i>
Fax: (916) 322-6702	Fax:

5. Contractor agrees to provide services in the manner specified herein and as detailed in Exhibit A-1, Detailed Scope of Work.

## Detailed Scope of Work

### **Background**

On February 14, 2006, the United States District Court for the Northern District of California, in Case No. C01-1351 TEH, *Plata v. Brown*, suspended the exercise of power by the Secretary of the California Department of Corrections and Rehabilitation (CDCR), as it relates to the administration, control, management, operation, and financing of the California prison medical health care system, and granted these powers to the Receivership. California Correctional Health Care Services (CCHCS) includes the area within CDCR that reports to the Receiver, and for convenience in this Agreement the term "CCHCS" refers to that area or, where the context so suggests, to CDCR. CCHCS' authority to expend state funds for health care services to state inmates on behalf of CDCR is authorized and mandated by the federal court order.

On October 19, 2010, Assembly Bill 1628 was signed into law by the Governor removing a restriction barring state prison inmates from enrollment into the State's Medi-Cal and Low Income Health Program for inpatient services provided off of state correctional institution grounds (Penal Code Section 5072 and Welfare and Institutions Code Section 14053.7). These provisions were subsequently amended on June 30, 2011, when Senate Bill 92 was signed into law.

CCHCS and DHCS under separate Interagency Agreement have agreed to the method CCHCS is to use to submit patient-inmate information for participation in the Federal Financial Participation program (FFP) and the Low Income Health Program (LIHP), to DHCS.

### **Scope of Services**

On behalf of CCHCS, the Contractor agrees to enroll eligible patient-inmates identified by the DHCS in the LIHP operated by Contractor for inpatient services provided off state correctional institution grounds, pursuant to Penal Code Section 5072 and Welfare and Institutions Code Section 14053.7, to the extent authorized in this agreement and specifically in Exhibit D Special Terms and Conditions (STC) attached hereto.

Services shall include, but are not limited to, the following:

#### **1. CCHCS Responsibilities**

- A. Reimburse hospitals at CCHCS contracted rates and/or in accordance with Penal Code Section 5023.5.
- B. Track monthly expenditures, made by CCHCS on behalf of CDCR, for medically necessary inpatient hospital services provided off of the grounds of a state correctional institution to patient-inmates eligible for LIHP. Quarterly CCHCS shall submit to Contractor invoices reflecting such expenditures for the quarter with a certification that the public expenditures are appropriate for claiming Federal Financial Participation

(FFP). The certified public expenditures (CPE) shall comply with federal law under 42 CFR Section 433.51.

- C. Reimburse Contractor a one-time processing fee as required by Penal Code Section 5072(c)(4) using a rate in the amount of \$10.00 per patient-inmate enrollee. The processing fee shall not be paid for a redetermination of current enrollment. These state funds shall be paid to Contractor for the non-federal share of routine administrative expenditures incurred in carrying out this Agreement.
- D. Reimburse Contractor for one-time non-federal share of allowable administrative costs associated with the CCHCS share of the set up of Contractor's LIHP as agreed upon by both parties, not to exceed \$5,000.

## 2. **Contractor Responsibilities**

Contractor agrees to the following:

- A. If DHCS provides to Contractor a list of patient-inmates that DHCS has determined eligible for Contractor's LIHP, consistent with federal and state law and the eligibility criteria adopted by Contractor, Contractor shall enroll the patient-inmate into Contractor's LIHP within 10 days of notification.
- B. If Contractor receives quarterly invoices and certifications reflecting CPEs from CCHCS, Contractor shall submit an appropriate claim based on those invoices and certifications to DHCS quarterly for claiming of FFP. Contractor agrees to provide an attestation and documentation to DHCS regarding enrollment information and payment made by CCHCS if required by the approved protocol for claiming FFP

## 3. **Additional Provisions:**

- A. The parties agree that Contractor's obligations under this Agreement shall not begin until such time as the Centers for Medicare and Medicaid Services (CMS) has approved the protocol for claiming FFP for services rendered to patient-inmates that are arranged for and paid by CCHCS. #
- B. Pursuant to Penal Code section 5072, subdivision (c)(3), the Contractor shall not experience any additional net expenditures of county funds due to the provision of services under this contract or section 5072.
- C. The Contractor shall be held harmless for any disallowance or deferral if federal action is taken due to the implementation of this section in accordance with the state's policies, directions, and requirements, as required by Penal Code Section 5072, subdivision (d)(3).

D. Services provided to patient-inmates under custody of CDCR shall be arranged, monitored, and paid by CCHCS. Contractor shall have no responsibility for providing; arranging, reimbursing, or coordinating services to the patient-inmates enrolled in the LIHP, and shall not be responsible for the quality of services provided by CDCR or CCHCS. CDCR, CCHCS, and the providers of services to patient-inmates held in state facilities shall not be considered subcontractors of Contractor's LIHP, and shall have no right to seek reimbursement from Contractor.

**Budget Detail and Payment Provisions**

**1. Invoicing and Payment**

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates listed in Exhibit A-1, Detailed Scope of Work, Items 1.C and 1.D.
- B. Invoices shall include the Agreement Number, sufficient scope and detail to define the actual work performed and specific milestones completed, including a description of the activities of the Contractor and Subcontractor, the hours allocated to those activities, the locations where work was performed, the expenses claimed, any required reports, and shall be submitted in duplicate not more frequently than monthly in arrears to:

California Department of Corrections and Rehabilitation  
Attn: Accounts Payable  
P.O. Box 187015  
Sacramento, CA 95818

**2. Budget Contingency Clause**

- A. 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.
- B. 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.

**3. Prompt Payment Clause**

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

**4. Fund Availability**

- A. It is mutually understood between the parties that this contract may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
- B. This contract is valid and enforceable only if sufficient funds are made available to the state by the United State Government for the fiscal year(s) covered by the terms of this agreement. In addition, this contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this contract in any manner.
- C. The parties mutually agree that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.
- D. The department has the option to invalidate the contract under the 90-day cancellation clause or to amend the contract to reflect any reduction in funds.

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

**SPECIAL TERMS AND CONDITIONS**

1. **Excise Tax**

The State of California is exempt from federal excise taxes, and 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.

2. **Force Majeure**

Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failures of performance constitute default if such delay or failure is caused by "Force Majeure." As used in this section, "Force Majeure" is defined as follows: Acts of war and acts of God such as earthquakes, floods, and other natural disasters such that performance is impossible.

3. **Inspection of Services**

Services performed by Contractor under this Agreement shall be subject to inspection by CCHCS at any and all times during the performance thereof.

4. **License and Permits**

The Contractor shall obtain at its expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this contract.

5. **Liability for Loss and Damages**

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

6. **Liability for Nonconforming Work**

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

**7. Right to Terminate (SCM 7.85)**

- A. The State reserves the right to terminate this Agreement subject to thirty (30) days written notice to the Contractor. Contractor may submit a written request to terminate this Agreement only if the State should substantially fail to perform its responsibilities as provided herein.
- B. However, the Agreement can be immediately terminated for cause. (Refer to GTC, Exhibit C, Item 7 Termination for Cause).
- C. This Agreement may be suspended or cancelled without notice, at the option of the Contractor, if the Contractor or State's premises or equipment are destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue service, or in the event the Contractor is unable to render service as a result of any action by any governmental authority.

**8. Settlement of Disputes**

In the event of a dispute, Contractor shall file a "Notice of Dispute" with CCHCS representative within ten (10) days of discovery of the problem. Within ten (10) days, CCHCS representative shall meet with the Contractor's representative for purposes of resolving the dispute. If the parties are not successful in informally resolving their dispute, either party may seek remedy or relief through any mechanism allowed by law.

**9. Access to Books and Record**

Contractor shall maintain all records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for a period of five years after final payment, unless identified for or under an audit review in which case all documentation pertaining to the claim will be maintained until the audit is completed. Contractor agrees to allow CCHCS, DHCS and/or Federal representatives, access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records as necessary for any state or federal auditing purposes on behalf of the LIHP program. Both parties agree that access under all provisions of this paragraph 9 shall be subject to the privacy and security provisions of applicable state and federal laws.

**10. Indemnification (Supersedes provision number 5, Indemnification, of Exhibit C)**

Pursuant to Penal code section 5072, subdivision (d)(1), the state shall indemnify and hold Contractor harmless against any and all losses, including, but not limited to, claims, demands, liabilities, court costs, judgments, or obligations, due to the implementation of Penal Code section 5072 as directed by the secretary and the State Department of Health Care Services.

## Data and Security

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

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

WHEREAS, the parties desire to comply with federal and California laws regarding the use and disclosure of individually identifiable health information, and in particular with the provisions of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act) and the regulations promulgated thereunder.

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

### ARTICLE 1 – DEFINITIONS

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

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

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

## ARTICLE 2 - CONFIDENTIALITY

### 2.1 Obligations and Activities of Business Associate

Business Associate agrees as follows:

- not to use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law;
- to establish, maintain, and use appropriate safeguards to prevent use or disclosure of the PHI other than as permitted herein;
- 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 direct costs (including the costs of Covered Entity) associated with mitigating or remedying any violation of this Agreement;
- 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;
- 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;
- 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.
- 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.
- 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.

- to provide to Covered Entity or an Individual, in a time and manner reasonably requested by Covered Entity, information collected in accordance with the preceding paragraph 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.
- 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.
- 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.
- 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.
- 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 Entity's 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. If Covered Entity requires additional safeguards that Business Associate does not adopt, either party may terminate this Agreement upon 30 days notice to the other party.
- 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.

- 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

- 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.
- 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

- Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosures of PHI.
- Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR

§164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

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

## 2.5 Permissible Requests by Covered Entity

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

## 2.6 Policy and Procedure Review

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

# ARTICLE 3 – SECURITY

## 3.1 Security Procedures

Each Party shall employ security procedures that comply with HIPAA and the HITECH Act and all other applicable state and federal laws and regulations (collectively, the "Law"), 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:

- require its agents and subcontractors to provide security for all data that is electronically exchanged between Covered Entity and Business Associate;
- provide, utilize, and maintain equipment, software, services and testing necessary to assure the secure and reliable transmission and receipt of data containing PHI;
- 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;
- maintain and enforce policies and guidelines for workstation use that delineate appropriate use of workstations to maximize the security of data containing PHI;
- maintain and enforce policies, procedures and a formal program for periodically reviewing its processing infrastructure for potential security vulnerabilities;
- 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:

- it will not change any definition, data condition or use of a data element or segment as proscribed in the HHS Transaction Standard Regulation.
- it will not add any data elements or segments to the maximum denied data set as proscribed in the HHS Transaction Standard Regulation.
- 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.
- it will not change the meaning or intent of any of the HHS Transaction Standard's implementation specifications.

### **4.2 Incorporation of Modifications to HHS Transaction Standards.**

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

### **4.3 Code Set Retention**

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

### **4.4 Business Associate Obligations**

- Business Associate shall not submit duplicate transmissions unless so requested by Covered Entity.
- 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.

- 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.
- 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.
- 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.
- Business Associate and Covered Entity shall keep and maintain all inmate eligibility source and/or electronic documents for a period of six (6) years from the date of document submission to Covered Entity.
- 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 three (3) years.
- 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.
- Business Associate agrees to conduct testing with Covered Entity to ensure delivery of files that are HIPAA-AS Compliant and to accommodate standard business requirements.

#### 4.5 Confidential and Proprietary Information

##### Proprietary Information

- Business Associate acknowledges that it will have access to certain proprietary information used in Covered Entity's business. Covered Entity's proprietary information derives its commercial value from the fact that it is not available to competitors or any third parties, and the disclosure of this information would or could impair Covered Entity's competitive position or otherwise prejudice its ongoing

business. Business Associate agrees to treat as confidential, and shall not use for its own commercial purpose or any other purpose, Covered Entity's proprietary information. Business Associate shall safeguard Covered Entity's proprietary

- information against disclosure except as may be expressly permitted herein. Such proprietary information includes, but is not limited to, confidential information
- concerning the business operations or practices of Covered Entity, including specific technology processes or capabilities.

## ARTICLE 5 – MISCELLANEOUS

### 5.1 Indemnification

DHCS and CPHCS shall mutually defend, indemnify and hold each other and their respective agencies, officers, employees, and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the acts or omissions of either DHCS' or CPHCS's officers, employees, and/or agents.

### 5.2 Term and Termination

- Term. The Term of this Agreement shall be effective as of the first date of commencement of services under this entire agreement, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- Termination for Cause. Upon a material breach by Business Associate of its obligation hereunder, Covered Entity may (i) terminate this Agreement and the Service Agreement; (ii) permit Business Associate to cure the breach; (iii) report the violation to the Secretary; and/or (iv) require Business Associate to take such other action as Covered Entity may request, at Business Associate's expense.
- Covered Entity's remedies under this paragraph shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other. If Covered Entity elects to terminate the Agreement pursuant to a breach of terms and conditions of this Exhibit, Covered Entity shall be relieved of any further obligations under the entire Agreement, and shall be immediately entitled to a refund of any amounts prepaid from the date of the termination through the end of the payment period, on a pro rata basis.  
The foregoing termination language is in addition to any other termination language set forth in the entire agreement.

- Effect of Termination.
  - (i) Except as provided in paragraph 5.2, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
  - (ii) In the event that Business Associate determines that returning the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Covered Entity's agreement that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

### 5.3 Disputes

#### HIPAA Appeal Procedures

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

- **Verbal Appeal**

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

- **Informal Appeal**

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

- **Formal Appeal**

Should Business Associate disagree with the informal appeal decision, Business Associate shall submit, within ten (10) working days after Business Associate's receipt of the decision of the informal appeal, to the CDCR Deputy Director, Division of Correctional Health Care Services, and a photo copy to the CDCR, Assistant Deputy Director, Office of Business Services, written notification indicating why the informal appeal decision is unacceptable, along with a copy of the original statement of dispute and a copy of CDCR's response. The CDCR Deputy Director, Division of Correctional Health Care Services, or his/her designee may meet

with Business Associate to review the issues within twenty (20) working days of the receipt of Business Associate's notification and shall provide Business Associate with written notification of the decision within forty-five (45) working days from the receipt of the formal appeal.

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

#### 5.4 Injunctive Relief

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

#### 5.5 Regulatory References

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

- **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 the HITECH Act and their regulations. All amendments to this Exhibit shall be in writing and signed by both parties through a formal amendment to the entire agreement.
- **Survival.**  
The respective rights and obligations of Business Associate and Covered Entity under Sections 4.5, 5.1 and 5.2 of this Agreement shall survive the termination of this Agreement.
- **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.
- **Interpretation.**  
Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- **Third Party Beneficiary**  
Unless otherwise set forth herein, nothing contained herein is intended, nor shall it be construed, to create rights running of the benefit of third parties.

## 5.6 Notices

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

### Covered Entity:

California Department of Corrections and Rehabilitation  
Privacy Officer  
HIPAA Compliance Unit  
Division of Correctional Health Care Services  
P.O. Box 942883  
Sacramento, CA 94283-0001  
Telephone: (916) 327-1842  
Facsimile: (916) 327-0545

Department of Health Care Services  
Privacy Officer  
Office of Legal Services  
P.O. Box 997413  
Sacramento, CA 95899-07413  
Telephone: (916) 440-7750  
[PrivacyOfficer@dhcs.ca.gov](mailto:PrivacyOfficer@dhcs.ca.gov)

**ATTACHMENT A  
NOTIFICATION OF BREACH (4/10)**

**A. Definitions**

1. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
2. Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C Section 17921 and implementing regulations.
3. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, as set forth under 45 CFR section 160.103.
4. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR section 160.103.
5. Privacy Rule shall mean the HIPAA Regulation that is found at 45 CFR Parts 160 and 164.
6. Personal Information shall have the meaning given to such term in California Civil Code section 1798.29.
7. Protected Health Information means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR section 160.103.
8. Required by law, as set forth under 45 CFR section 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
9. Security Incident means the loss of unencrypted PHI, or the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, or confidential data that is essential to the ongoing operation of the User's organization and intended for internal use; or interference with system operations in an information system.

10. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
11. Security Rule shall mean the HIPAA regulation that is found at 45 CFR section 164. HIPAA Exhibit 4/10.
12. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. section 17932(h), any guidance issued pursuant to such Act and the HIPAA regulations.

#### B. Breaches and Security Incidents

During the term of this Agreement, User agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:

1. **Notice to CCHCS** (1) To notify CCHCS **immediately by telephone call plus email or fax** upon the discovery of a breach of unsecured PHI or PI in electronic media or in any other media if the PHI or PI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to CCHCS by the Social Security Administration. (2) To notify CCHCS **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by User as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of User.

Notice shall be provided to the CCHCS Program Contract Manager, the CCHCS Privacy Officer and the CCHCS Information Security Officer (per item 6. Contact Information). If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the Information Security Office mainline at (877) 974-4772 or via e-mail at [CCHCS\\_ISO@cdcr.ca.gov](mailto:CCHCS_ISO@cdcr.ca.gov)

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI, User shall take:

- a. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
- b. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

## **2. Investigation and Investigation Report**

To immediately investigate such security incident, breach, or unauthorized access, use or disclosure of PHI or PI. Within 72 hours of the discovery, User shall submit an updated "CCHCS Breach/Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the CCHCS Program Contract Manager, the CCHCS Privacy Officer, and the CCHCS Information Security Officer:

## **3. Complete Report**

To provide a complete report of the investigation to the CCHCS Program Contract Manager, the CCHCS Privacy Officer, and the CCHCS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "CCHCS Breach/Incident Report" form and shall include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If CCHCS requests information in addition to that listed on the "CCHCS Breach/Incident Report" form, User shall make reasonable efforts to provide CCHCS with such information. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "CCHCS Breach/Incident Report" form.

## **4. Notification of Individuals**

If the cause of a breach of PHI or PI is attributable to User or its subcontractors, agents or vendors, User shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days. The CCHCS Program Contract Manager, the CCHCS Privacy Officer, and the CCHCS Information Security Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.

## **5. Responsibility for Reporting of Breaches**

If the cause of a breach of PHI or PI is attributable to User or its agents, subcontractors or vendors, and User is a Covered Entity as defined under HIPAA and the HIPAA regulations, User is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured PHI involves more than 500 residents of the State of California or jurisdiction, User shall notify the Secretary of the breach immediately upon

discovery of the breach. If User has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to CCHCS in addition to User, User shall notify CCHCS, and CCHCS and User may take appropriate action to prevent duplicate reporting. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 1, above.

**6. Contact Information**

To direct communications to the above referenced staff, the User shall initiate contact as indicated herein. The parties reserve the right to make changes to the contact information below by giving written notice to the User. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

<b>CCHCS Program Contract Manager</b>	<b>CCHCS Privacy Officer</b>	<b>CCHCS Information Security Officer</b>
David Hale Health Program Manager II Healthcare Invoice, Data and Provider Services Branch  3701 N. Freeway Blvd. Sacramento, CA 95843  Email: <a href="mailto:david.hale@cdcr.ca.gov">david.hale@cdcr.ca.gov</a>  Telephone: (916) 648-8196	Privacy Officer c/o: Office of HIPAA Compliance Department of Samantha Thomas, Chief P.O. Box 4038, 660, Suite 480 Sacramento, CA 95812-4038  Email: <a href="mailto:privacy@cdcr.ca.gov">privacy@cdcr.ca.gov</a> <a href="mailto:hippa@cdcr.ca.gov">hippa@cdcr.ca.gov</a>  Telephone: (877) 974-4722  Fax: (916) 324-6473	Information Security Officer Department Bill Hogan/ISO, DPM III P.O. Box 4038 Sacramento, CA 95812-4038  Email: <a href="mailto:cchcs-iso@cdcr.ca.gov">cchcs-iso@cdcr.ca.gov</a> Fax: (916) 324-2703  Telephone: ITS Service Desk (916) or 323-2455 (877) 974-4772

