

## INMATE COMMUNICATION SERVICES

### SANTA BARBARA COUNTY SHERIFF'S OFFICE INMATE COMMUNICATION SERVICES AGREEMENT

#### INTRODUCTION

**THIS AGREEMENT** (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and Global Tel\*Link Corporation d/b/a **ViaPath Technologies**, with an address at 3120 Fairview Park Drive, Falls Church, VA 22042 (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide Inmate Communication Services and COUNTY agrees to accept the services specified herein, (Effective Date), January 1, 2026.

**WHEREAS**, CONTRACTOR represents that it is specially trained, skilled, experienced, and competent to perform Inmate Communication Services required by COUNTY and COUNTY desires to retain the services of CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth;

**WHEREAS**, this Agreement will be for a period of three years, effective January 1, 2026, to December 31, 2028, with the option of two one-year extensions.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

#### 1. **DESIGNATED REPRESENTATIVE**

Lt. Guillermo Ramirez at phone number (805) 681-4047 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Alexandra Booker at phone number (703) 955-3910 is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advance written notice to the other party.

CONTRACTOR shall agree to all terms and conditions set forth in this Agreement, and CONTRACTOR shall agree to the specifications, including, but not limited to, the features and functionalities of Inmate Communications Services as defined in **Attachment 1- Mandatory Requirements Inmate Communication Services "(Attachment 1)"**. If COUNTY designates an agent to act on COUNTY's behalf ("Designated Agent"), CONTRACTOR shall follow COUNTY's direction in working with such Designated Agent.

#### 2. **NOTICES**

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

**FOR COUNTY:**

Santa Barbara County Sheriff's Office  
Attn: Guillermo Ramirez  
4434 Calle Real

**FOR CONTRACTOR:**

ViaPath Technologies  
Attn: Alexandra Booker  
3120 Fairview Park Drive, Suite 300

Santa Barbara, CA 93110

Falls Church, VA 22042

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

### **3. SCOPE OF SERVICES**

3.1. Pursuant to RFP # 9180002, County hereby awards this Agreement to Contractor and provides the Contractor the exclusive right and privilege to install and operate all inmate communication services (inmate telephone service, video visitation services, and correctional-grade tablets, at a minimum of a one to one ratio of tablets for incarcerated individuals) and related equipment at County's Northern Branch Jail NBJ and Santa Barbara Main Jail SBJ facilities effective January 1, 2026, or other date mutually agreed upon, in writing, by County and Contractor. **Attachment 1 -Mandatory Requirements** of the RFP is hereby incorporated into the Agreement and attached hereto as **Attachment 1- Mandatory Requirements**. Details surrounding County's Facilities and required equipment can be found in **Attachment 1- Section K (Facility Specifications)**. Contractor shall, at no cost to County, provide all wiring for the inmate and visitation telephones, install the inmate and visitation telephones and the related hardware and software specifically identified herein, to enable inmates at the County's Facilities to make free, collect, pre-paid and/or debit local, long distance.

3.2. Contractor shall provide turn-key video visitation solution (VVS) for County's Correctional Facilities which shall include, without limitation, automated scheduling software, completion of onsite and remote video visitation sessions. Contractor shall install and operate all video visitation stations and related equipment. Contractor shall, without cost to County, provide all wiring for the video visitation stations, install the video visitation stations and related hardware and software specifically identified herein, to enable visitors/end-users to schedule and complete onsite and remote video visitation sessions with inmates from the Facilities.

3.3. Contractor shall provide a minimum of a one to one ratio of incarcerated persons correctional-grade mobile device/tablet solution ("Tablets") at no cost to County. The Tablets shall, at a minimum, have the capability to access various applications including electronic messaging, education, instructional material, entertainment, media, inmate requests, medical requests, grievances and commissary ordering. County reserves the right to add an Inmate Telephone Services (ITS) and/or VVS application to the Tablets, if selected.

3.4. Contractor shall provide ITS at County's Northern Branch Jail NBJ and Santa Barbara Main Jail SBJ facilities.

### **4. TERM**

This Agreement shall commence upon the Effective Date of January 1, 2026, and remain in force for an initial term of 3 years with an expiration date of December 31, 2028 ("Initial Term"). This Agreement shall not bind, nor purport to bind, County for any contractual commitment in excess of the Initial Term. However, County, at its sole option, shall have the right to renew this Agreement for 2 additional 1 year terms or on a month to month basis (not to exceed 12 months) prior to expiration of the Initial Term or renewal term of

this Agreement. In the event County exercises such right, all terms and conditions, requirements, and specifications of this Agreement, and any written Amendments, shall remain the same and apply during the renewal term(s). This Agreement will not automatically renew.

## **5. COMPENSATION OF CONTRACTOR**

In full consideration for CONTRACTOR's services, CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of **Attachment 1, Section D (General Conditions)** attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address defined in **Attachment 1, Section K (Facility Specifications)**. Unless otherwise specified on **EXHIBIT B, Payment Arrangements and Offer**, payment shall be net thirty (30) days from presentation of invoice.

- A. Pursuant to CONTRACTOR'S response to RFP #9180002, its amendments, presentation and the Best and Final Offer (BAFO), unless specifically stated otherwise, both parties mutually agree CONTRACTOR shall:
  - a. Remit to COUNTY **thirty-five (35%)** percent revenue share to COUNTY on Gross Revenue generated by and through inmate tablet services. Gross Revenue is defined in **Attachment 1, Section D (General Conditions)**.
  - b. CONTRACTOR agrees to provide the weekly and monthly reporting as specified in **Attachment 1, Section D (General Conditions)**.
- B. Unless specifically stated otherwise, both parties herein mutually agree upon the fees for electronic messaging, photo messaging, Entertainment, Media and games rates listed in **Attachment 1, Sections L (Rates, Fees, and Revenue Share – Offer 2)**, and incorporated herein by reference.

## **6. INDEPENDENT CONTRACTOR**

It is mutually understood and agreed that CONTRACTOR (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to COUNTY and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions hereof. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

## **7. STANDARD OF PERFORMANCE**

CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

## **8. DEBARMENT AND SUSPENSION**

CONTRACTOR certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.

## **9. TAXES**

CONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

## **10. CONFLICT OF INTEREST**

CONTRACTOR covenants that CONTRACTOR presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR. CONTRACTOR must promptly disclose to COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.

## **11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any of such items to other parties except after prior written approval of COUNTY.

Unless otherwise specified in **Exhibit A, Statement of Work**, CONTRACTOR hereby assigns to COUNTY all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by CONTRACTOR pursuant to this Agreement (collectively referred to as "Copyrightable Works and Inventions"). COUNTY shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. CONTRACTOR agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. CONTRACTOR warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. CONTRACTOR at its own expense shall defend, indemnify, and hold harmless COUNTY against any claim that any Copyrightable Works or Inventions or other items provided by CONTRACTOR hereunder infringe upon intellectual or other proprietary rights of a third party, and CONTRACTOR shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by COUNTY in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

## **12. NO PUBLICITY OR ENDORSEMENT**

CONTRACTOR shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. CONTRACTOR shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of COUNTY. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects, without obtaining the prior written approval of COUNTY.

## **13. COUNTY PROPERTY AND INFORMATION**

All of COUNTY's property, documents, and information provided for CONTRACTOR's use in connection with the services shall remain COUNTY's property, and CONTRACTOR shall return any such items whenever requested by COUNTY and whenever required according to the Termination section of this Agreement. CONTRACTOR may use such items only in connection with providing the services. CONTRACTOR shall not disseminate any COUNTY property, documents, or information without COUNTY's prior written consent.

## **14. RECORDS, AUDIT, AND REVIEW**

CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.

If federal, state or COUNTY audit exceptions are made relating to this Agreement, CONTRACTOR shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, CONTRACTOR shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

Tablet Commission payments will be completed monthly, and all Tablet Commission payments will be final and binding upon the COUNTY unless written objection is received by the CONTRACTOR within sixty (60) days of receipt of commission payment by the COUNTY.

#### **15. INDEMNIFICATION AND INSURANCE**

CONTRACTOR agrees to the indemnification and insurance provisions as set forth in **EXHIBIT C, Risk Management** attached hereto and incorporated herein by reference.

#### **16. NONDISCRIMINATION**

COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

#### **17. RESERVED**

#### **18. NON-ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of COUNTY and any attempt to, so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. However, CONTRACTOR shall have the right to assign some or all its rights and/or obligations under this Agreement at any time to any entity that controls, is controlled by or is under common control with CONTRACTOR (each an "Affiliate") without the consent of the COUNTY; provided, further, CONTRACTOR shall remain liable for any failure of any Affiliate to perform any assigned obligations. For the avoidance of doubt, a merger involving (i) CONTRACTOR or (ii) a sale of CONTRACTOR or substantially all of CONTRACTOR'S assets shall not constitute an assignment requiring consent of COUNTY for purposes of this Agreement.

#### **19. TERMINATION**

A. **By COUNTY.** COUNTY may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience, for nonappropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein.

1. **For Convenience.** COUNTY may terminate this Agreement in whole or in part upon forty-five (45) days written notice. During the forty-five (45) day period, CONTRACTOR shall, as directed by COUNTY, wind down and cease its services as quickly and efficiently as reasonably

possible, without performing unnecessary services or activities and by minimizing negative effects on COUNTY from such winding down and cessation of services and adhere to the transition requirements as outlined in **Attachment 1, Section G (General Installation Requirements)**.

2. **For Nonappropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or COUNTY governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then COUNTY will notify CONTRACTOR of such occurrence and COUNTY may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term. CONTRACTOR shall adhere to the transition requirements as outlined in **Attachment 1, Section G (General Installation Requirements)**.
  
  3. **For Cause.** Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, COUNTY may consider CONTRACTOR to be in default and shall provide CONTRACTOR with written notice identifying the applicable default or material breach. If such default or material breach is not remedied to the satisfaction and approval of COUNTY within thirty (30) calendar days following CONTRACTOR's receipt of such notice, COUNTY may, at COUNTY's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, CONTRACTOR shall immediately discontinue all services affected (unless the notice directs otherwise) and notify COUNTY as to the status of its performance and shall adhere to the transition requirements as outlined in **Attachment 1, Section G (General Installation Requirements)**. The date of termination shall be the date the notice is received by CONTRACTOR, unless the notice directs otherwise.
- B. By CONTRACTOR. Except as defined in **Attachment 1, Section D (General Conditions), Subsection 2 (Invoices, Revenue Share and Reporting)**, Should COUNTY fail to pay CONTRACTOR all or any part of the payment set forth in **EXHIBIT B, Payment Arrangements and Offer**, CONTRACTOR may, at CONTRACTOR's option terminate this Agreement if such failure is not remedied by COUNTY within thirty (30) days of written notice to COUNTY of such late payment.
- C. Upon termination, CONTRACTOR shall deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process, except such items as COUNTY may, by written permission, permit CONTRACTOR to retain. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of COUNTY shall be final. The

foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity. Upon termination, CONTRACTOR shall adhere to the transition requirements as outlined in **Attachment 1, Section E (General Installation Requirements)**.

## **20. SECTION HEADINGS**

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

## **21. SEVERABILITY**

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

## **22. REMEDIES NOT EXCLUSIVE**

No remedy herein conferred upon or reserved to either party is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

## **23. TIME IS OF THE ESSENCE**

Time is of the essence in this Agreement and each covenant and term is a condition herein.

## **24. NO WAIVER OF DEFAULT**

No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

## **25. ENTIRE AGREEMENT AND AMENDMENT**

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

## **26. SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

## **27. COMPLIANCE WITH LAW**

CONTRACTOR shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY is a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

## **28. CHANGE IN LAW**

If there is a change in rule, regulation, or other legal mandates required by any federal, state, or local authority which adversely affects COUNTY'S or CONTRACTOR's rights, obligations, or intended benefit under the Agreement, the Parties agree to meet in good faith to address the impact of such changes.

## **29. CALIFORNIA LAW AND JURISDICTION**

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

## **30. EXECUTION OF COUNTERPARTS**

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

## **31. AUTHORITY**

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

## **32. SURVIVAL**

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

## **33. PRECEDENCE**

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the **Exhibits** and **Attachment 1**, the provisions of the **Exhibits** and **Attachment 1** shall prevail over those in the numbered sections.

**34. BUSINESS ASSOCIATE**

The parties agree to the terms and conditions set forth in **Exhibit D, HIPAA Business Associate Agreement (BAA)**, attached hereto and incorporated herein by reference.

**35. SURETY BOND**

CONTRACTOR shall furnish a Surety Bond (guarantying contract performance of all covenants and stipulations) in the form of a bond issued by a Surety Company authorized to do business in the State of California. CONTRACTOR shall provide a Cashier’s Check or Irrevocable Letter of Credit payable to the COUNTY within ten (10) calendar days after execution of this Agreement and prior to any installation work or equipment delivery. The Surety Bond shall be made payable to the COUNTY in the amount of one-hundred and fifty-thousand dollars (\$150,000.00) and will be retained during the full period of this Agreement and/or renewal terms. **No personal or company checks are acceptable. The Agreement number (if applicable) and/or dates of performance must be specified on the Surety Bond.** In the event that the COUNTY exercises its option to extend the Agreement for an additional period, the CONTRACTOR shall be required to maintain the validity and enforcement of the Surety Bond for the said period, pursuant to the provisions of this paragraph, in an amount stipulated at the time of the Agreement renewal.

**36. LIQUIDATED DAMAGES**

CONTRACTOR’s failure to meet this Agreement requirements both correctly and on time may result in substantial injury to the COUNTY; the amount of damages resulting from such failure may not always be quantified with certainty. Each failure to meet a requirement, both correctly and on time, may be subject to fines and liquidated damages as outlined herein. Any enforced fines/liquidated damages will be invoiced by the COUNTY to the CONTRACTOR. Payments due to the COUNTY for the invoiced amount(s) shall be due within thirty (30) days of CONTRACTOR’s receipt of the invoice.

LIQUIDATED DAMAGES	
Description	Amount
<b>ITS</b> Any changes to the monthly collect call threshold; all changes must be approved by COUNTY prior to implementation.	\$350.00 per day from the day the unauthorized change was implemented through the date CONTRACTOR discontinues the unapproved fees and/or charges.
<b>All Inmate Communication Services</b> Any charges/fees added to the called party's bill or account or inmate without the express written consent of COUNTY.	\$350.00 per day from the date the additional charges/fees were first added through the date the charges/fees were discontinued.
<b>All Inmate Communication Services</b> Unauthorized free calls, video visitation sessions or Tablet transactions completed by CONTRACTOR including allowing access to unauthorized wireless networks.	\$2.00 per completed, unauthorized free call.
<b>All Inmate Communication Services</b> Revenue share payments, ITS traffic detail reports, billing files, CDRs, VVS detail reports, Tablet transaction reports and/or all other reports not containing the required fields, received by COUNTY	5% per month of the revenue share amount due.  \$750.00 per month for each report not received by the due date specified or for each report that does not contain all of the fields and information

<p>after the date specified in <b>Attachment 1, Section D (General Conditions)</b>. If the revenue share payment is late, reporting is late and/or reports do not contain all required fields, late charges/interest for all three shall apply. Revenue share payment discrepancies must be resolved by CONTRACTOR and to COUNTY'S reasonable satisfaction, within thirty (30) days of receipt of notification of a discrepancy from COUNTY and/or its Designated Agent or such discrepancy is subject to late charges, as described and/or termination of this Agreement at the sole discretion of COUNTY and/or any legal course of action COUNTY elects to pursue.</p>	<p>identified in <b>Attachment 1, Section D (General Conditions)</b>.  \$100.00 per day for any daily CDR reports not submitted by CONTRACTOR, for each day where the CDR report does not contain all of the fields and information identified in <b>Attachment 1, Section D (General Conditions)</b>.</p>
<p><b>All Inmate Communication Services</b> Any changes to the rates without the express written approval of COUNTY. CONTRACTOR must issue refunds to all overcharged end-users or inmates within 5 business days; a list of the issued credits must be provided to COUNTY as documentation. COUNTY will not issue a refund of revenue-share or cost recoupment for unapproved rate increases.</p>	<p>\$2.00 per completed call, video visitation session or Tablet transaction which was rated/charged using the unauthorized rates(s).</p>
<p><b>All Inmate Communication Services</b> Any bill types, transactions or applications implemented or removed regarding the processing and/or completion of inmate telephone calls without the express written consent of COUNTY.</p>	<p>\$500.00 per day for each day the bill type, transaction or applications is implemented or removed.</p>
<p><b>All Inmate Communication Services</b> Due to CONTRACTOR'S action(s), and only to the extent such failure is caused by CONTRACTOR'S acts or omissions, if any installation, initial or additionally requested, inmate communications equipment is not completed within the timeframe allowed in the agreed-upon implementation plan, as adjusted for delays caused by COUNTY actions or inactions, third-party dependencies identified in the implementation plan, or events beyond the CONTRACTOR'S reasonable control.</p>	<p>\$500.00 per day for each day after the agreed-upon date until the installation is complete.</p>
<p><b>All Inmate Communication Services</b> CONTRACTOR shall be responsible for resolving any reported repairs or replacements within 10 days following the date of written notification, by COUNTY, of a service request or inmate communication service failure ("Cure Period"). Should CONTRACTOR fail to resolve the reported repair or replacement within the specified Cure</p>	<p>\$500.00 for each day after the Cure Period and for each reported repair or replacement that the CONTRACTOR fails to resolve, until each reported repair or replacement is resolved by CONTRACTOR.</p>

<p>Period, CONTRACTOR may be liable for liquidated damages.</p>	
<p><b>All Inmate Communication Services</b>                  When COUNTY suffers one or more lost, unrecoverable or un-useable recording(s). COUNTY agrees to notify CONTRACTOR of such instances and provide up to 7 days per instance for CONTRACTOR to produce the call recordings.</p>	<p>\$1,000.00 per occurrence.</p>
<p>CONTRACTOR shall adhere to COUNTY'S performance process when upgrading each inmate communications service, software, equipment, or performing any changes to the inmate communications which affect the scope under this Agreement. Any deviation from the process may result in liquidated damages incurred by CONTRACTOR.</p>	<p>\$500.00 per occurrence.</p>

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **Global Tel\*Link Corporation d/b/a ViaPath Technologies**.

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on the date executed by COUNTY.

**ATTEST:**

Mona Miyasato  
County Executive Officer  
Clerk of the Board

**COUNTY OF SANTA BARBARA:**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Bob Nelson, Chair  
Chair, Board of Supervisors

Date: \_\_\_\_\_

**RECOMMENDED FOR APPROVAL:**

Santa Barbara County Sheriff's Office

**CONTRACTOR:**

ViaPath Technologies

By: Bill Brown  
Department Head

By: Alex Booker  
Authorized Representative

Name: Alexandra Booker

Title: Sr. Manager, Contracts Administration

**APPROVED AS TO FORM:**

Rachel Van Mullem  
County Counsel

**APPROVED AS TO ACCOUNTING FORM:**

Betsy M. Schaffer, CPA  
Auditor-Controller

By: Michelle Montes  
Deputy County Counsel

By: Juan Jizquierdo  
Deputy

**APPROVED AS TO FORM:**

Risk Management

By: Marisa Kahn  
Marisa Kahn, Interim Risk Manager

# Exhibit A

County of Santa Barbara  
ViaPath Technologies  
Inmate Communications Services

STATEMENT OF WORK

## EXHIBIT A

### STATEMENT OF WORK

Pursuant to RFP #9180002, COUNTY hereby awards this Agreement to CONTRACTOR and provides CONTRACTOR the exclusive right and privilege to install, provide and maintain a turn-key Inmate Communication Services inclusive of personnel, management, accounting and reporting, software and software support, and all other services and equipment associated with providing Inmate Communication Services to the Norther Branch Jail NBJ and Santa Barbara Main Jail SBJ facilities as described herein. **Attachment 1b – Inmate Communication Services Mandatory Requirements** of the RFP is hereby incorporated into the Agreement and attached hereto as **Attachment 1 – Mandatory Requirements Inmate Communication Services (“Attachment 1”)**.

Contractor shall provide ITS at County’s Northern Branch Jail NBJ and Santa Barbara Main Jail SBJ facilities.

Contractor shall provide turn-key video visitation solution (VVS) for Northern Branch Jail which shall include, without limitation, automated scheduling software, completion of onsite and remote video visitation sessions. Contractor shall install and operate all video visitation stations and related equipment. Contractor shall, without cost to County, provide all wiring for the video visitation stations, install the video visitation stations and related hardware and software specifically identified herein, to enable visitors/end-users to schedule and complete onsite and remote video visitation sessions with inmates from the Facilities.

Contractor shall also provide correctional-grade mobile device/tablet solution ("Tablets") at no cost to County at a minimum of a one to one ratio of tablets for incarcerated individuals. The Tablets shall, at a minimum, have the capability to access various applications including electronic messaging, education, instructional material, entertainment, media, inmate requests, medical requests, grievances and commissary ordering. County reserves the right to add an ITS and/or VVS application to the Tablets if selected. **Attachment 1, Section J (Facility Specifications)**. CONTRACTOR shall, at no cost to COUNTY, be responsible for providing personnel to assist with technical assistance at both COUNTY’s Facilities as required and directed by COUNTY.

# Exhibit B

County of Santa Barbara  
ViaPath Technologies  
Inmate Communication Services

PAYMENT ARRANGEMENTS AND OFFER

**EXHIBIT B**

**PAYMENT ARRANGEMENTS**

- A. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR’s satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A, Statement of Work** and **Attachment 1** and as determined by COUNTY.
- B. Monthly, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE or Designated Agent an invoice or certified claim on the County Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned Board Contract Number. COUNTY REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within thirty (30) days of receipt of correct and complete invoices or claims from CONTRACTOR.
- C. Pursuant to Contractor's response to RFP # 9180002 Contractor shall remit to County 35% of gross revenue (less all applicable taxes, government imposed fees or charges, and billing or security fees) received from the per minute rate or subscription/access pass charged to inmates for paid inmate content access, excluding voice and video communications. Gross Revenue is defined in Attachment 1- Section D (General Conditions).
- D. COUNTY’s failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY’s right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.

<b>SUBSECTION L - RATES, FEES AND REVENUE SHARE - OFFER 2</b>		
<b>Category</b>	<b>Per Minute Rate</b>	<b>Avg Cost/Call: 15 Minutes</b>
<b>Local</b>		
Collect/Direct Bill	\$0.07	\$1.05
Pre-Paid Collect	\$0.07	\$1.05
Pre-Paid Card/Debit	\$0.07	\$1.05
<b>Interlata/Intrastate</b>		
Collect/Direct Bill	\$0.07	\$1.05
Pre-Paid Collect	\$0.07	\$1.05
Pre-Paid Card/Debit	\$0.07	\$1.05
<b>Interlata/Interstate</b>		
Collect/Direct Bill	\$0.07	\$1.05
Pre-Paid Collect	\$0.07	\$1.05
Pre-Paid Card/Debit	\$0.07	\$1.05
<b>Interlata/Interstate and Domestic Int'l</b>		
Collect/Direct Bill	\$0.07	\$1.05
Pre-Paid Collect	\$0.07	\$1.05
Pre-Paid Card/Debit	\$0.07	\$1.05

International		
Collect/Direct Bill	N/A	N/A
Pre-Paid Collect	\$0.07	Plus the applicable call termination rate for the destination country as published on ViaPath’s website, which may be updated every 3 months in accordance with the FCC Order.
Debit	\$0.07	Plus the applicable call termination rate for the destination country as published on ViaPath’s website, which may be updated every 3 months in accordance with the FCC Order.
Voicemail (Per Message)		
Inbound	\$0.50	N/A
Outbound	N/A	N/A
<b>SUBSECTION 2 - VVS RATES, FEES AND REVENUE SHARE/COST RECOUPMENT</b>		
VVS RATES		
Category	Per Minute Rate	Avg Cost/Visit 30 Minutes
30-Minute Remote Video Visitation Session:	\$0.12	\$3.60
<b>SUBSECTION 3 - TABLET APPLICATION FEES AND REVENUE SHARE</b>		
TABLET RATES		
Category	Fee Name	Fee Amount
Educational	No Fee	\$0.00
Electronic Messages (Inbound Messaging from Family and Friends)	Per Message	\$0.25
Photo Messages	Per Photo	\$0.50
Entertainment Media - Games	Per Minute Rate	\$0.04
Entertainment Media – Movies	Per Minute Rate	\$0.04
Entertainment Media – Music	Per Minute Rate	\$0.04
eBooks	No Fee	\$0.00
Tablet Commission	Monthly Revenue Share on Entertainment Content	35%
<b>Tablet Transaction Fees Excluding Voice Communications and Video Visitation Services</b>		
Certified Check Mailed to ViaPath		\$0.00
Money Order Mailed to ViaPath		\$0.00
IVR/Web/Auto Reload/Kiosk		Up to \$4.95 per transaction
Live Operator		\$5.95 per transaction

Tablet Account Setup Fee		Up to \$1.95
Third Party Financial Transaction Fees		Up to \$5.95 per transaction when transaction is paid via a live agent  Up to \$3.00 per transaction when transaction is paid via automated payment system
CONTRACTOR will provide the COUNTY with an Annual Technology Grant in the amount of One Hundred and Twenty-Five Thousand Dollars (\$125,000), which shall be paid monthly by CONTRACTOR in the amount of \$10,416.66.		

# Exhibit C

County of Santa Barbara  
ViaPath Technologies  
Inmate Communication Services

RISK MANAGEMENT

**Exhibit C**  
**Risk Management**

**A. INSURANCE**

- i. CONTRACTOR shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder, and the results of that work by CONTRACTOR, his agents, representatives, employees or subcontractors. Annual renewals for the term of this policy should be submitted prior to the expiration date of any policy.
- ii. CONTRACTOR shall provide COUNTY a Certificate of Insurance, on an original ACORD certificate, evidencing required coverage described below, within ten (10) days after receipt of notice of award. Said certificate shall show COUNTY as an additional insured and shall include a waiver of subrogation, as described below.
- iii. CONTRACTOR agrees to carry and maintain Workers Compensation Insurance. Proof of Workers Compensation Insurance must be provided within ten (10) days after receipt of notice of award.
- iv. **Minimum Scope of Insurance.** The coverage shall be at least as broad as:
  - a. **Commercial General Liability (“CGL”).** Insurance Services Office (“ISO”) Form CG 00 01 covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate.
  - b. **Automobile Liability.** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
  - c. **Workers’ Compensation.** As required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
  - d. **Professional Liability (Errors and Omissions).** Insurance appropriate to the CONTRACTOR’s profession, with limit of no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.
- v. If CONTRACTOR maintains higher limits than the minimums shown above, COUNTY requires and shall be entitled to coverage for the higher limits maintained by the COUNTY. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to CONTRACTOR.

- vi. **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:
- a. **Additional Insured.** COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.
  - b. **Primary Coverage.** For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be the primary insurance as respect to COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
  - c. **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to COUNTY.
  - d. **Waiver of Subrogation Rights.** CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not COUNTY has received a waiver of subrogation endorsement from the insurer.
  - e. **Deductibles and Self-Insured Retention.** Any deductibles or self-insured retentions must be declared to and approved by COUNTY.
  - f. **Acceptability of Insurers.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
  - g. **Verification of Coverage.** CONTRACTOR shall furnish COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive CONTRACTOR's obligation to provide them. CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of this Agreement. COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

- h. **Failure to Procure Coverage.** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate this Agreement. Maintenance of required insurance coverage is a material element of this Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
- i. **Subcontractors.** CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors.
- j. **Claims Made Policies.** If any of the required policies provide coverage on a claims-made basis: The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of Agreement work.

  - a. Insurance must be maintained and evidence of insurance must be provided for at least ten (10) days after Agreement execution.
  - b. If coverage is canceled or non-renewed and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, CONTRACTOR must purchase “extended reporting” coverage for a minimum of three (3) years after completion of Agreement work.
- k. **Special Risks or Circumstances.** COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- vii. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to the Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.
- viii. Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.
- ix. COUNTY agrees to provide CONTRACTOR with reasonable and timely notice on any claim, demand or cause of action made by or brought against COUNTY arising out of the service provided by CONTRACTOR. CONTRACTOR shall have the right to defend any such claim at its sole cost and expense and with its exclusive discretion.
- x. For any person or CONTRACTOR with whom CONTRACTOR enters into a contract to provide the services defined in this Agreement, CONTRACTOR must:

- a. Provide a certificate of coverage, for all persons providing the services defined in this Agreement and prior to those persons beginning work on any project, showing coverage is being provided for the duration of the Agreement. Coverage shall be based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of California Labor Code.
  - b. Provide a new certificate, prior to the end of the coverage period, of coverage showing extension of coverage if the coverage period shown on CONTRACTOR's current certificate of coverage ends during the duration of the project.
  - c. Retain all required certificates of coverage for the duration of the project and for two (2) years thereafter;
  - d. Notify COUNTY in writing, within ten (10) days after CONTRACTOR knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- xi. Any subcontracts for the products/services described herein shall include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by CONTRACTOR and COUNTY and to ensure that COUNTY is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontractor in those matters described in the Agreement.

**B. INDEMNIFICATION**

- i. CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any willful misconduct, or errors or omissions of CONTRACTOR, its employees, or agents, and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. CONTRACTOR's indemnification obligation shall not apply to claims arising from COUNTY's sole negligence or willful misconduct.
- ii. COUNTY agrees to provide CONTRACTOR with reasonable and timely notice of any claim, demand, or cause of action made or brought against COUNTY arising out of or related to the services rendered by CONTRACTOR.
- iii. In the event any infringement claim is made or threatened against COUNTY, or injunctive relief is granted to a claimant, CONTRACTOR shall at its sole cost and expense (i) obtain the right for COUNTY to continue use of the services; (ii) substitute other services of like capability, or (iii) replace or modify the services to render them non-infringing while retaining like capability. In the event CONTRACTOR is unable to perform any of the above,

COUNTY may terminate this Agreement upon providing ninety (90) days written notice to CONTRACTOR and CONTRACTOR shall be responsible for all of COUNTY's costs and expenses of whatever nature or kind in connection therewith.

- iv. These indemnities and remedies shall survive the expiration or other termination of the Agreement.

# Exhibit D

County of Santa Barbara  
ViaPath Technologies  
Inmate Communication Services

HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)

## EXHIBIT D

### HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)

This Business Associate Agreement (“BAA”) supplements and is made a part of the Agreement between COUNTY (referred to herein as “Covered Entity”) and CONTRACTOR (referred to herein as “Business Associate”).

#### RECITALS

Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).

Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“HITECH Act”), and 45 CFR Parts 160 and 164, Subpart C (the “Security Rule”), Subpart D (the “Data Breach Notification Rule”) and Subpart E (the “Privacy Rule”) (collectively, the “HIPAA Regulations”).

As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (C.F.R.) and contained in this BAA.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

#### A. Definitions

1. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
2. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
3. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
4. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

5. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
6. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
7. **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.
8. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
9. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
10. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental 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; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
11. **Protected Information** shall mean PHI provided by Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.
12. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
13. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

B. Obligations of Business Associate

1. **Permitted Uses.** Business Associate shall not use Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity [45 C.F.R. Sections 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].
2. **Permitted Disclosures.** Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Business Associate may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry

out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the Protected Information, to the extent the third party has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

3. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. Business Associate shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement, the BAA, or the HIPAA Regulations.
4. **Appropriate Safeguards.** Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement or this BAA, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].
5. **Reporting of Improper Access, Use or Disclosure.** Business Associate shall report to Covered Entity in writing of any access, use or disclosure of Protected Information not permitted by the Agreement and this BAA, and any Breach of Unsecured PHI, as required by the Data Breach Notification Rule, of which it becomes aware without unreasonable delay and in no case later than 60 calendar days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
6. **Business Associate's Subcontractors and Agents.** Business Associate shall ensure that any agents and subcontractors to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by paragraph (c) above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such

restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).

7. **Access to Protected Information.** To the extent that the Covered Entity keeps a designated record set then Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within five (5) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
8. **Amendment of PHI for Business Associate who is Required to Maintain a Record Set.** If Business Associate is required to maintain a designated record set on behalf of the Covered Entity the Business Associate shall within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such Protected Information available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity [45 C.F.R. Section 164.504(e)(2)(ii)(F)].
9. **Accounting Rights.** Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of Protected Information, Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that Business Associate maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as

set forth in Sections B.2 of this BAA [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph shall survive the termination of this Agreement.

10. **Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Covered Entity and to the Secretary of the U.S. Department of Health and Human Services (Secretary) for purposes of determining Business Associate's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. Business Associate shall provide to Covered Entity a copy of any Protected Information that Business Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.
11. **Minimum Necessary.** Business Associate (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)]. Business Associate understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
12. **Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information.
13. **Business Associate's Insurance.** Business Associate represents and warrants that it purchases commercial insurance to cover its exposure for any claims, damages or losses arising as a result of a breach of the terms of this BAA.
14. **Notification of Possible Breach.** During the term of the Agreement, Business Associate shall notify Covered Entity within twenty-four (24) hours of any suspected or actual breach of security, or any access, use or disclosure of Protected Information not permitted by the Agreement or this BAA or unauthorized use or disclosure of PHI of which Business Associate becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]
15. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if the Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under the Agreement or this BAA or other arrangement, the Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of the Covered Entity that Business Associate believes constitutes a material breach or violation of the Covered Entity's obligations under the Agreement or this BAA or other arrangement within five (5) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
16. **Audits, Inspection and Enforcement.** Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a

reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this BAA for the purpose of determining whether Business Associate has complied with this BAA; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this BAA, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under the Agreement or this BAA, Business Associate shall notify Covered Entity within ten (10) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

#### C. Termination

1. **Material Breach.** A breach by Business Associate of any provision of this BAA, as determined by Covered Entity, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding [45 C.F.R. Section 164.504(e)(2)(iii)].
2. **Judicial or Administrative Proceedings.** Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
3. **Effect of Termination.** Upon termination of the Agreement for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Covered Entity, Business Associate shall continue to extend the protections of Section B of this BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e)(ii)(2)(I)]. If Covered Entity elects destruction of the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

#### D. Indemnification

If Business Associate fails to adhere to any of the privacy, confidentiality, and/or data security provisions set forth in this BAA or if there is a Breach of PHI in Business Associate's possession and, as a result, PHI or any other confidential information is unlawfully accessed, used or disclosed, Business Associate

agrees to reimburse Covered Entity for any and all costs, direct or indirect, incurred by Covered Entity associated with any Breach notification obligations. Business Associate also agrees to pay for any and all fines and/or administrative penalties imposed for such unauthorized access, use or disclosure of confidential information or for delayed reporting if it fails to notify the Covered Entity of the Breach as required by this BAA.

#### E. Disclaimer

Covered Entity makes no warranty or representation that compliance by Business Associate with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

#### F. Certification

To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or contractors, may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HITECH Act, the HIPAA Regulations or this BAA.

#### G. Amendment to Comply with Law

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. Covered Entity may terminate the Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Agreement or this BAA when requested by Covered Entity pursuant to this Section or (ii) Business Associate does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

#### H. Assistance in Litigation of Administrative Proceedings

Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement or this BAA, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a

claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is named adverse party.

I. No Third-Party Beneficiaries

Nothing express or implied in the Agreement or this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

J. Effect on Agreement

Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.

K. Entire Agreement of the Parties

This BAA supersedes any and all prior and contemporaneous business associate agreements between the parties and constitutes the final and entire agreement between the parties hereto with respect to the subject matter hereof. Covered Entity and Business Associate acknowledge that no representations, inducements, promises, or agreements, oral or otherwise, with respect to the subject matter hereof, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein. No other agreement, statement or promise, with respect to the subject matter hereof, not contained in this BAA shall be valid or binding.

L. Interpretation

The provisions of this BAA shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BAA. This BAA and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

