

# **Attachment C**

SANTA BARBARA COUNTY <sup>[HL1]</sup> SHERIFF'S OFFICE  
AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR  
CORRECTIONAL COMMISSARY SERVICES AGREEMENT  
~~AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR~~  
~~CORRECTIONAL COMMISSARY~~ <sup>[PL2]</sup> AGREEMENT TERMS

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 Keefe Commissary Network, LLC with an address at 13369 Valley Boulevard, Fontana CA 92335 (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein. COUNTY hereby agrees to execute this Correctional Commissary Services Agreement effective January 1, 2021 ("Effective Date").<sup>[HL3]</sup>

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

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

**1. DESIGNATED REPRESENTATIVE**

Lt. Anthony Espinoza Dulce Brooks at phone number ~~805-681-4252~~ is 42524047 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Dang Nguyen at phone number 909-429-6949 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 commissary management services management as defined in Attachment 1 – Mandatory Requirements Inmate Correctional Commissary Services Mandatory Requirements ("Attachment 1") which is attached hereto as part of Exhibit A and incorporated herein by reference. 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: Lt. Anthony Espinoza Dulce Brooks  
4434 Calle Real  
Santa Barbara, CA 93110

**FOR CONTRACTOR:**

Keefe Commissary Network, LLC  
Attn: Terry Schroeder  
13369 Valley Boulevard  
Fontana, CA 92335

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~~ 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

CONTRACTOR agrees to provide services to COUNTY in accordance with **EXHIBIT A and Attachment 1** attached hereto and incorporated herein by reference.

### 4. TERM

CONTRACTOR shall commence performance on **11/01/January 1, 2021 2020** ("Effective Date") and end performance upon completion, but no later than **10/31/December 31, 2024, 2023** ("Initial Term") unless otherwise directed by COUNTY or unless earlier terminated.

~~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 two (2) additional one (1) year terms or on a month-to-month basis (not to exceed twelve (12) months) prior to expiration of the Initial Term or renewal term(s) of this Agreement. In the event COUNTY exercises such right, all terms and conditions, requirements, and specifications of this Agreement, and any Amendments, shall remain the same and apply during the renewal term(s). This Agreement will not automatically renew.~~

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 two (2) additional one (1) year terms or on a month-to-month basis (not to exceed twelve (12) months) prior to expiration of the Initial Term or renewal term(s) of this Agreement. In the event COUNTY exercises such right, all terms and conditions, requirements, and specifications of this Agreement, and any 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 EXHIBIT B 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 given in Section 2 NOTICES above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.~~

### **6.5. COMPENSATION OF CONTRACTOR**

- A. In full consideration for CONTRACTOR's services, CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of **EXHIBIT B and Attachment 1, Section A (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 F (Facility Specifications)**, given in Section 2 ~~NOTICES~~ above following completion of the ~~increments identified on EXHIBIT B~~. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.
- B. Pursuant to CONTRACTOR'S response to RFP #918002, 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 Net Sales generated by and through all inmate, point of sale commissary and friends and family commissary sales. Net Sales is defined in Attachment 1, Section AD (General Conditions).
  - b. Implement the inmate, point of sale and friend and family commissary menus listed in Attachment 1, Section H (Welfare-Indigent Kit Menu), Section I (Commissary Menu), Section J (Point of Sale (POS) Menus(POS) and Section K (Family and Friends Menu) wherein CONTRACTOR agrees to provide the products available for purchase by inmate and friend and family members at the prices listed therein.

- c. Implement the fee schedule for funding of an inmate's trust account via intake kiosks, lobby kiosks, website, live operator call, Interactive Voice Response (IVR) call, walk-in-retailer, third party and/or lockbox as listed in Attachment 1, Section G (Revenue Share and Fees).
- d. Implement the fee schedule found in Attachment 1, Section G (Revenue Share and Fees) for inmate use of CONTRACTOR's debit release cards to which an inmate's remaining trust account balance is transferred to the debit release card at the time the inmate is released from COUNTY custody.
- e. Remit payment of the lease rate for CONTRACTOR's use of the five-hundred and seventy-six (576) square feet of Facility space for onsite storage, order picking and delivery of items purchased by inmates and the friends and family. Lease rate per square foot is listed in Attachment 1, Section G (Revenue Share and Fees). COUNTY CONTRACTOR shall remit payment to COUNTY shall invoice CONTRACTOR monthly and follow the requirements specified in Attachment 1, Section A (General Conditions). Payments due to COUNTY for the invoiced amount(s) shall be due within thirty (30) days of CONTRACTOR's receipt of the invoice.
- f. CONTRACTOR agrees to provide the weekly and monthly reporting as specified in Attachment 1, Section A (General Conditions).

~~PRICES AND FEES~~<sup>(PL4)</sup>

- C. Unless specifically stated otherwise, both parties herein mutually agree upon the menu prices for products, deposit fees, debit release card fees and leasing rates listed in Attachment 1, Sections G through K-J (Current Menu), and deposit fees, debit release card fees and leasing rates listed in Attachment 1, Section X (LKLJ) in accordance with EXHIBIT B attached hereto and incorporated herein by reference.

**7.6. 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.

**8.7. 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.

#### **9.8. 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.

#### **10.9. TAXES**

CONTRACTOR shall pay all taxes, levies, duties, and assessments, shipping charges, network charges, insurance, interest, penalties, attorney fees, liquidated damages, licenses, fees, tariffs or other costs 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. CONTRACTOR agrees that it is entirely responsible for calculating, collecting and remitting all fees and taxes, including sales tax -where applicable, on all commissary services provided to inmates and friend and family members, items provided to the inmates and subject to sales tax in the State of California.

#### **11.10. 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.

#### **12.11. 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 (provided this does not include data collected by CONTRACTOR through the provision of its money transmission service), ~~[HL5]~~all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, ~~[HL6]~~ 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 ~~hereinafter~~ and/or in Exhibit XHIBIT A, CONTRACTOR hereby assigns to COUNTY all ~~copyright, patent, and other intellectual property and proprietary rights to all data, datam~~ documents, reports, photos, designs, sound or audiovisual recordings and other materials prepared or provided by CONTRACTOR pursuant to this Agreement (collectively referred to as "DocumentationWorks and Inventions"), ~~[HL7]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 DocumentationWorks and Inventions. ~~any Copyrightable Works and Inventions~~. CONTRACTOR agrees to take such

actions and execute and deliver such documents as may be needed to validate, ~~the,~~ protect and confirm the rights and assignments provided hereunder. CONTRACTOR warrants that any ~~Copyrightable Works and Inventions~~ ~~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 any Documentation~~ ~~Works and 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.

#### ~~CONFIDENTIALITY~~

~~The [HL8] Parties hereto shall keep confidential any and all information which either Party states to be confidential or proprietary and so advises the other Party or labels the information as such ("Confidential Information"). Such information shall remain the property of the Party owning such information and, when in tangible form shall be returned to the respective party or otherwise disposed of as directed by the appropriate Party. Any violation of this provision by either Party shall be actionable. However, notwithstanding the foregoing, neither Party shall be under any obligation to maintain in confidence any portion of the information it has received which:~~

- ~~— Is now, or which becomes hereafter through no act or failure to act on the part of the receiving Party, generally known or available to the public;~~
- ~~— Is already known by the receiving Party at the time of the disclosure of such information and was not under any obligations of confidence;~~
- ~~— Is hereafter furnished to the receiving Party by a source other than the owner, provided such source is not known by the receiving Party to be prohibited from disclosing such information by a contractual, legal or fiduciary obligation;~~
- ~~— Has been independently developed by the receiving Party without benefit of the confidential or proprietary information of the other; or, is required to be disclosed by any applicable law or regulation or by order of any governing body or court of competent jurisdiction; provided however, that the Party being required to disclose the confidential or proprietary information of the other must promptly notify the owner of same of the demand for such disclosure and such disclosure to a government entity pursuant to law, order or regulation shall not provide a basis for any additional disclosure of such information by either Party.~~

~~Each Party including its agents and representatives shall:~~

- ~~— Follow reasonable procedures to protect and maintain the confidentiality of the Confidential Information;~~
- ~~— Not disclose, or allow to be disclosed, the Confidential Information to any party other than to its employees, contractors, officers, or directors who have a need to know in order to perform the services contemplated under this Agreement, and are under the same binding obligation of confidentiality provided herein with respect to any such information;~~
- ~~— Not use the Confidential Information for any purpose other than to perform under this Agreement; and~~
- ~~— Treat all Confidential Information of the other Party with the same degree of care to avoid disclosure to third parties as it uses with respect to the recipient Party's own Confidential Information, but not less than a reasonable degree of care.~~

**13-12. 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.

**14-13. 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~~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.

**15-14. 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 creation of said record~~termination of this Agreement. ~~[HL9]Upon ten (10) business days' written notice, CONTRACTOR shall provide COUNTY requested records, to fully reconcile or examine any and all of COUNTY's information pertaining to this Agreement.~~ All accounting records shall be kept in accordance with generally accepted accounting principles. ~~in~~CONTRACTOR shall maintain accurate, complete and reconcilable records, in an electronic format, detailing the Gross Revenues and Net Sales from which revenue share payments can be determined for Commissary. CONTRACTOR shall maintain all individual sales records, including food, non-food, debit and postage purchases. CONTRACTOR shall also maintain all electronic records from trust funding reconciliation reports. 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. COUNTY retains the right to have another independent Agency of COUNTY's exclusive choice, perform any or all reconciliations and examinations pertaining to this Agreement. 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.

In the event the foregoing audit reveals a revenue share shortage, CONTRACTOR shall pay resolved and agreed upon amounts due plus COUNTY's reasonable cost of reconciliation, within thirty (30) days of the resolution date. If the agreed-upon amounts are not paid within thirty (30) days, the amounts due to COUNTY will accrue interest at the rate of 1.5% per month, or the highest rate permitted by law (whichever is less) until such monies are paid.

**16-15. INDEMNIFICATION AND INSURANCE**

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

**17-16. 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.

**18. NONEXCLUSIVE AGREEMENT**

~~CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires.~~

**19-17. 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.

Upon receipt of the COUNTY's written consent, any such purchaser, assignee, successor, or delegate shall thereupon assume all rights and responsibilities of CONTRACTOR. However, the COUNTY may assign any and/or all of its rights and obligations hereunder without CONTRACTOR's written consent but upon the COUNTY's written notice thereof to CONTRACTOR: [MM10][HL11]

- A. To any affiliate of Contractor;
- B. Pursuant to any sale or transfer of all or substantially all of its business or assets;
- C. Pursuant to any merger, acquisition or reorganization; or
- D. As part of a bona fide pledge to a third party lending institution of collateral of the assignor's rights hereunder.

If during the Agreement term and any renewal term(s), CONTRACTOR merges or is acquired by another entity, the following documents must be submitted to the COUNTY:

- A. Corporate resolutions prepared by CONTRACTOR and the new entity ratifying acceptance of all of the Agreement and its terms, conditions and processes;
- B. New Federal Identification Number (FEIN) if applicable; and,
- C. Other documentation requested by COUNTY.

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 ensure 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 this Agreement.

CONTRACTOR expressly understands and agrees that it assumes and is solely responsible for all legal and financial responsibilities related to the execution of a subcontract. CONTRACTOR agrees that utilization of a subcontractor to provide any of the products/services in the Agreement shall in no way relieve CONTRACTOR of the responsibility for providing the products/services as described and set forth herein.

In the event of unsatisfactory performance, as determined by COUNTY, COUNTY may request a substitution of a subcontractor utilized by CONTRACTOR to fulfill the obligations under this Agreement.



## 20.18. TERMINATION

- A. By COUNTY. COUNTY may, by ninety (90) days [HL12] written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience, for non-appropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein.
- i. **For Convenience.** COUNTY may terminate this Agreement in whole or in part upon ~~thirty (30)~~ ninety (90) days written notice. During the ~~thirty (30)~~ ninety (90) 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 C (General Installation Requirements).
  - ii. **For Non-appropriation 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 C (General Installation Requirements).
  - iii. **For Cause.** Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, 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 C (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 A (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, 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 C (General Installation Requirements).

C.D. Should CONTRACTOR for any reason be unable to satisfy the requirements contained in this Agreement, COUNTY may, at its sole discretion, call for the Surety Bond due, in part or in full for non-performance, and/or as liquidated damages.

**21.19. 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.

~~22. SEVERABILITY~~

**20. 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.

~~23.21. REMEDIES NOT EXCLUSIVE~~

No remedy herein conferred upon or reserved to COUNTY 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.

~~24.22. TIME IS OF THE ESSENCE~~

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

~~25.23. 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.

~~26.24. 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.

~~27.25. 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.

~~28.26. 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.

**29-27. 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.

**30-28. 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.

**31-29. 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 entities, 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.

**32-30. SURVIVAL**

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

**33-31. 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.

~~[p.13]~~

**34-32. 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.

**33. SURETY BOND**

CONTRACTOR shall must 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 must 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.

MINIMUM ANNUAL GUARANTEE

**34. MINIMUM ANNUAL GUARANTEE**

CONTRACTOR shall pay COUNTY a Minimum Annual Guarantee (MAG) in the amount of three-hundred and twenty five-thousand dollars (\$325,000.00) for each year under this Agreement. If the total revenue share for the commissary services paid to CUSTOMERCOUNTY from November 30<sup>th</sup> January 1<sup>st</sup> -through November 29<sup>th</sup> December 31<sup>st</sup> -of each year of the Agreement is less than the MAG, the difference shall be due to COUNTY or its Designated Agent on or before the 15th day of the month following the applicable MAG year.

**35. SUPPLEMENTAL PAYMENT**

CONTRACTOR shall pay COUNTY an upfront supplemental payment in the amount of thirty-five thousand (\$35,000) dollars within five (5)- business days of the date the Agreement is executed by both parties and CONTRACTOR being provided the fully executed Agreement.

**36. DISCREPANCY**

A. Should a discrepancy or conflict among the specific provisions of this Agreement and its amendments, RFP #918002 and its attachments and amendments, presentation, the BAFO and the CONTRACTOR's RFP response, the discrepancy or conflict shall be resolved as follows.

- i. The specific provisions of the Agreement Terms (and its attachments) will prevail over the RFP, its attachments and amendments, presentation and BAFO.
- ii. The RFP, its attachments and amendments and BAFO will prevail over the CONTRACTOR's RFP response.

B. Exceptions or objections to specific RFP provisions in the CONTRACTOR's RFP response that have not been explicitly accepted by the COUNTY in writing shall not be included in this Agreement and shall be given no weight or consideration.

**37. FORCE MAJEURE**

Neither party shall be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, embargoes, pandemics, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, or unusual weather conditions.

**35.38. ADDITIONAL REQUIREMENTS AND SPECIFICATIONS**

A. CONTRACTOR shall provide any and all notices as may be required under the Drug-Free Workplace Act of 1998, 28 CFR Part 67, Subpart F, and any applicable California laws, to the employees and all subcontractors to ensure the COUNTY's Facilities maintain a drug free workplace. COUNTY reserves the right to review drug testing results of CONTRACTOR's personnel assigned to work at the Facilities. COUNTY may require, at CONTRACTOR's expense, drug testing of CONTRACTOR's personnel if no drug testing records exist or if such test results are older than six (6) months.

B. CONTRACTOR does not, and shall not during the performance of this Agreement knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

C. CONTRACTOR shall recruit, select, train, promote, transfer, and release its staff without regard to race, color, religion, national origin, handicap, age, or gender (except where age or gender is a bona fide occupational qualification). Further, CONTRACTOR shall administer its other staff policies such as compensation, benefits, layoffs, return from layoffs, work sponsored training, education, and tuition

assistance in compliance with the American's with Disability Act (ADA) and all state and federal laws relating to non-discrimination in employment.

~~LIQUIDATED DAMAGES~~

**39. LIQUIDATED DAMAGES**

CONTRACTOR's failure to meet ~~contract~~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. ~~All liquidated damages are subject to the limitations stated in Section 37. Force Majeure~~ HL14]

LIQUIDATED DAMAGES	
Description	Amount
<u>Implementation timeline not executed as per requirements of this Agreement. This includes all required remote access to CONTRACTOR's user applications.</u>	<u>Five-hundred (\$500.00) dollarse<del>d</del> per day for each day after the agreed-upon date until the installation is complete.</u>
<u>Any schedule changes or delays in the commissary delivery process without COUNTY notification and approval.</u>	<u>One-hundred (\$100.00) dollars per day from the day the change was implemented to the date the CONTRACTOR rectifies the delivery schedule.</u>
<u>Unauthorized menu changes including item changes and pricing.</u>	<u>Two-hundred and fifty (\$250.00) dollars per day from the date the changes were completed through the date CONTRACTOR rectifies the menu changes. Refunds must <del>to</del>be processed to the inmates within <b>twenty-four (24)</b>- hours of resolution.</u>
<u>Additional/unapproved fees charged to inmates or family/friends for any commissary or trust funding activity covered by this Agreement.</u>	<u>Two-hundred and fifty (\$250.00) dollars per day from the date the changes were completed through the date the charges/fees were discontinued.</u>
<u>CONTRACTOR is responsible for providing a response to all inmate and/or staff grievances within a <del>seventy-two (72)</del> -hour period [MM15]HL16]of receiving the grievance.</u>	<u>Twenty-five (\$25.00) dollars per day once the <b>seventy-two (72)</b> -hour period has passed without resolution.</u>
<u>CONTRACTOR shall be responsible for resolving any reported repairs or service issues within <b>ten (10)</b> days following the date of notification of a service request, <del>or</del> inmate commissary and/or funding</u>	<u>Five-hundred (\$500.00) dollars for each day after the Cure Period and for each reported service issue that the CONTRACTOR fails to resolve <del>the service issue</del>, until each reported</u>

<p>service failure ("Cure Period"). Should CONTRACTOR fail to resolve the reported repair, <del>or</del> service <del>or funding</del> issue within the specified Cure Period, CONTRACTOR may be liable for liquidated damages.</p>	<p>repair or replacement is resolved by CONTRACTOR.</p>
<p>Weekly/monthly reports or invoicing not containing the required or accurate information and/or received by the COUNTY after the date specified in this Agreement.</p> <p>Revenue share discrepancies must be resolved by <del>Vender</del>CONTRACTOR to the COUNTY's reasonable satisfaction, within <b>thirty (30)</b> -days of receipt of notification of a discrepancy by the COUNTY or such discrepancy is subject to late charges as described and/or termination of the Agreement at the sole discretion of the COUNTY and /or any legal recourse of action the COUNTY elects to pursue.</p>	<p><b>One-hundred (\$100.00) dollars</b> per day for any weekly/monthly invoices not submitted by CONTRACTOR by the required date or where the reports do not contain all the required information identified in Attachment 1, Section A (General Conditions). <b>Seven-hundred and fifty (\$750.00) dollars</b> per month for each report not received by the due date specified or each report that does not contain the fields and information identified in Attachment 1, Section A (General Conditions).</p> <p>Late charges shall be <b>ten (10%)</b> of the revenue share amount due.</p>
<p><b>Liquidated Damages (cont.)</b></p>	
<p><b>Description</b></p>	<p><b>Amount</b></p>
<p>In the event CONTRACTOR does not meet the staffing requirements outlined in this Agreement and does not fill the required vacant positions within <b>six (6)</b>- weeks (excluding security clearance), CONTRACTOR may incur liquidated damages.</p>	<p><b>One-hundred (\$100.00) dollars</b> per day for each day following the <b>six (6)</b>- week period until CONTRACTOR reaches the required staffing level.</p>
<p>When COUNTY suffers any security breach in conjunction with CONTRACTOR's commissary solution, <del>that is not the result of the County's or its employees', contractors', subcontractors' or agents' use or misuse of the solution,</del> [HL17] including accessing the <del>Customer</del>COUNTY's network without authorization. The COUNTY agrees to notify the CONTRACTOR of such instances and provide up to <b>seven (7)</b>- days per instance for CONTRACTOR to remedy the security issue.</p>	<p><b>One-thousand (\$1,000.00) dollars</b> per occurrence.</p>
<p>CONTRACTOR shall adhere to the <del>Customer</del>COUNTY's performance process as outlined in <b>Attachment 1, Section B (Customer Service)</b> [KR18][HL19] when upgrading any commissary service device, software, equipment, or performing any changes to the commissary or funding services which affects the scope under this Agreement. Any deviation from the process may</p>	<p><b>One-hundred (\$100.00) dollars</b> per occurrence.</p>

result in liquidated damages incurred by  
CONTRACTOR.

Agreement for Services of Independent Contractor between the County of Santa Barbara and [Keefe Commissary Services, LLC](#).

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: \_\_\_\_\_  
Chair, Board of Supervisors

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

**RECOMMENDED FOR APPROVAL:**  
[Santa Barbara County Sheriff's Office](#)

**CONTRACTOR:**  
[Keefe Commissary Services, LLC](#)

By: \_\_\_\_\_  
Department Head

By: \_\_\_\_\_  
Authorized Representative

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**  
Michael C. Ghizzoni  
County Counsel

**APPROVED AS TO ACCOUNTING FORM:**  
Betsy M. Schaffer, CPA  
Auditor-Controller

By: \_\_\_\_\_  
Deputy County Counsel

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

**APPROVED AS TO FORM:**  
Risk Management

By: \_\_\_\_\_  
Risk Management



## EXHIBIT A

### STATEMENT OF WORK

Pursuant to RFP #918002, COUNTY hereby awards this Agreement to CONTRACTOR and provides CONTRACTOR the exclusive right and privilege to install, provide and maintain a turn-key commissary system inclusive of personnel, management, accounting and reporting, software and software support, and all other services and equipment associated with providing commissary ~~services~~ to the Facilities as described herein. Attachment 1b – Correctional Commissary Mandatory Requirements of the RFP is hereby incorporated into the Agreement and attached hereto as Attachment 1 – Mandatory Requirements Inmate Commissary Services (“Attachment 1”) ~~Correctional Commissary Mandatory Requirements~~. Commissary shall include (at a minimum) order picking and processing, delivery and distribution of wholesale purchased goods, inventory management, banking software, hands-free payment handling services (i.e. booking kiosks, lobby kiosks), point-of-sale mobile carts, friend and family purchases, debit release cards, indigent, welfare and admission kits and electronic ordering of commissary items. Details surrounding COUNTY’s Facilities and required equipment can be found in Attachment 1, Section F (Facility Specifications). CONTRACTOR shall, at no cost to COUNTY, be responsible for providing all management, supervisory, commissary personnel, sales inventory and equipment required to manage and operate the commissary at all of COUNTY’s Facilities as required and directed by COUNTY.

CONTRACTOR will provide COUNTY with a specific Point of Contact (POC) for all contracted commissary services, including any and all additional technology.

COUNTY will have one or more individual(s) assigned as the POC for all areas of service ~~or for one or for~~ both COUNTY Facilities. If CONTRACTOR assigns more than one POC, each will be assigned to a specific area of service or a specific Facility and COUNTY will be notified as to the POC for each area. CONTRACTOR’s POC’s will work directly with each Facility ~~or Designated Agent~~ to assist in managing and coordinating the services outlined in this Agreement.

COUNTY shall implement the Scope of Services as defined in ~~this RFP~~ Attachment 1, Section A (General Conditions), Subsection 1.003 in a 2 phased approach. Phase 1 shall include the installation and implementation of only Southern Branch Jail (SBJ). Implementation for SBJ shall begin upon the effective date of the Agreement. Phase 2 shall include the installation and implementation of Northern Branch Jail (NBJ). NBJ is tentatively expected to be completed by the end of the 4<sup>th</sup> quarter of 2020 and populated during the 1<sup>st</sup> quarter of 2021. However, COUNTY may revise this date at any time and without penalty. It shall be understood that at the end of Phase 2, all services defined in the RFP shall include both SBJ and NBJ.

**EXHIBIT B**

**PAYMENT ARRANGEMENTS**

Periodic Compensation

For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR shall be paid a total contract amount, including, leasing costs and cost reimbursements, not to exceed \$2,947,000<sup>(HL20)</sup>.00.

~~A. For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, not to exceed \$ ~~xx~~.~~

B.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 and Attachment 1 and as determined by COUNTY.

C.B. ~~{ENTER PERIOD i.e., monthly, quarterly, annually}WeeklyMonthly~~ 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.

D.C. 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.

D. Santa Barbara County First Year Summary of Costs:

<b>Santa Barbara County First Year Summary of Costs</b>			
	<b><u>Main Jail</u></b>	<b><u>North Branch Jail</u></b>	<b><u>TOTAL</u></b>
<b><u>Inmate Commissary</u></b>	<b><u>\$426,820.00</u></b>	<b><u>\$162,430.00</u></b>	<b><u>\$589,250.00</u></b>
<b><u>Inmate POS</u></b>	<b><u>\$284,550.00</u></b>	<b><u>\$108,290.00</u></b>	<b><u>\$392,840.00</u></b>
<b><u>CONTRACTOR Labor Cost</u></b>	<b><u>Factored into menu costs</u></b>		<b><u>\$0.00</u></b>
<b><u>Total</u></b>	<b><u>\$711,370.00</u></b>	<b><u>\$270,720.00</u></b>	<b><u>\$982,090.00</u></b>

EXHIBIT C  
RISK MANAGEMENT [MM21]

A. INSURANCE

- i. ~~Vendor~~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~~~~the Vendor~~, 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. ~~Vendor~~CONTRACTOR shall provide ~~Customer~~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 ~~Customer~~COUNTY as an additional insured and shall include a waiver of subrogation, as described below.
- iii. ~~Vendor~~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. with the proposal to Customer**COUNTY.
- iv. **A.—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 ~~\$21,000,000~~ per [HL22]occurrence and \$2,000,000 in the aggregate.
  - b. **Automobile Liability.** ISO Form Number CA 00 01 covering any auto (Code 1), or if ~~Vendor~~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 ~~Vendor~~CONTRACTOR’s profession, with limit of no less than ~~\$21,000,000~~ [HL23]per occurrence or claim, \$2,000,000 aggregate.
- v. If ~~the Vendor~~CONTRACTOR maintains higher limits than the minimums shown above, ~~Customer~~COUNTY requires and shall be entitled to coverage for the higher limits maintained by ~~the Vendor~~COUNTY. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to ~~the Vendor~~CONTRACTOR.
- vi. **B.—Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:
  - a. **Additional Insured.** ~~Customer~~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 ~~the Vendor~~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 ~~Vendor's~~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, ~~the Vendor's~~CONTRACTOR's insurance coverage shall be the primary insurance as respect to ~~Customer~~COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by ~~Customer~~COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the ~~Vendor's~~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 ~~Customer~~COUNTY.

d. Waiver of Subrogation Rights. ~~Vendor~~CONTRACTOR hereby grants to ~~Customer~~COUNTY a waiver of any right to subrogation which any insurer of said ~~Vendor~~CONTRACTOR may acquire against ~~Customer~~COUNTY by virtue of the payment of any loss under such insurance. ~~Vendor~~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 ~~Customer~~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~~ ~~Customer~~COUNTY. ~~[HL24]Customer~~COUNTY may require ~~the Vendor CONTRACTOR to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.~~

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. ~~Vendor~~CONTRACTOR shall furnish ~~Customer~~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 ~~Customer~~COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive ~~the Vendor's~~CONTRACTOR's obligation to provide them. ~~The Vendor~~CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of ~~thethis~~ Agreement. ~~Customer~~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, ~~Customer~~COUNTY has the right but not the obligation or duty to terminate ~~this~~ Agreement. Maintenance of required insurance coverage is a material element of ~~thethis~~ Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by ~~Customer~~COUNTY as a material breach of contract.

Subcontractors. ~~Vendor~~CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and

VendorCONTRACTOR shall ensure that CustomerCOUNTY is an additional insured on insurance required from subcontractors.

i.

—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, the VendorCONTRACTOR must purchase “extended reporting” coverage for a minimum of ~~five~~three (35) years [HL25] after completion of Agreement work.

k. ~~C.~~ Special Risks or Circumstances. CustomerCOUNTY reserves the right to [HL26] 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. VendorCONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

viii. Any failure, actual or alleged, on the part of CustomerCOUNTY 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 CustomerCOUNTY.

ix. CustomerCOUNTY agrees to provide VendorCONTRACTOR with reasonable and timely notice on any claim, demand or cause of action made by or brought against CustomerCOUNTY arising out of the service provided by VendorCONTRACTOR. VendorCONTRACTOR 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 VendorCONTRACTOR with whom VendorCONTRACTOR enters into a contract to provide the services defined in this Agreement, VendorCONTRACTOR 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 Vendor’sCONTRACTOR’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 CustomerCOUNTY in writing, within ten (10) days after VendorCONTRACTOR 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 VendorCONTRACTOR and CustomerCOUNTY and to ensure that CustomerCOUNTY 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 [HL27][HL28]

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 cause whatsoever, including the acts, errors or omissions of any person or entity 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 applies to COUNTY's active as well as passive negligence but does not apply to COUNTY's sole negligence or willful misconduct. [HL29]

~~VendorCONTRACTOR shall defend, indemnify, and hold harmless CustomerCOUNTY and its officers, officials, employees, agents and volunteers from any losses, costs (including reasonable attorney's fees and court costs) damages, judgments and/or liability) arising from actions, causes of action or claims brought or threatened under the Agreement, for (a) any actual or alleged negligence or dishonesty of, or any actual or alleged act of commission or omission by, VendorCONTRACTOR or any of its employees, agents or subcontractors in providing the equipment and services hereunder; (b) the operation of VendorCONTRACTOR's business or cCommissary; (c) any breach by VendorCONTRACTOR of its obligations hereunder; or (d) any alleged patent, copyright or trademark infringement or unauthorized use of trade secrets or other proprietary rights in connection with cCommissary, except where such claims, demands or liabilities are directly resulting from to the sole negligence or willful misconduct of CustomerCOUNTY, its officers, officials, employees, agents and volunteers.~~

ii. CustomerCOUNTY agrees to provide VendorCONTRACTOR with reasonable and timely notice of any claim, demand, or cause of action made or brought against CustomerCOUNTY arising out of or related to the services rendered by VendorCONTRACTOR shall have the right to defend any such claim at its sole cost and expense and with its exclusive discretion.

iii. In the event any infringement claim is made or threatened against CustomerCOUNTY, or injunctive relief is granted to a claimant, VendorCONTRACTOR shall at its sole cost and expense (i) obtain the right for CustomerCOUNTY 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 VendorCONTRACTOR is unable to perform any of the above, CustomerCOUNTY may terminate this Agreement upon providing ninety (90)-days' written notice to VendorCONTRACTOR and VendorCONTRACTOR shall be responsible for all of Customer'sCOUNTY's costs and expenses of whatever nature or kind in connection therewith. [HL30]

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

## 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.

EXHIBIT E  
CONTRACTOR PAYMENT SERVICES[HL31]

- 1. Payment Services.** CONTRACTOR will provide cash handling services and payment processing services for payments made through kiosks, walk-in retailers, online websites and/or mobile sites, call centers or applications operated by CONTRACTOR or such other methods ("Transactions") for crediting inmate trust account balances held by COUNTY on behalf of inmate(s) (the "Services"). CONTRACTOR shall provided the Services in its capacity as a licensed money services business. CONTRACTOR represents and warrants to COUNTY that CONTRACTOR is duly licensed to provide the Services and will do so in compliance with applicable laws and regulations.
- 2. Authorization.** COUNTY authorizes CONTRACTOR, to handle cash and to submit Transactions initiated by end-users' credit card networks or otherwise, for authorization, processing and settlement to COUNTY for deposit to the inmate trust accounts.
- 3. Responsibilities of CONTRACTOR.**

  - a. CONTRACTOR will receive payments from end-users to be directed and posted to the inmates trust account, by way of the Services.
  - b. CONTRACTOR will post payment files to the inmate's trust account every 15-minutes. CONTRACTOR will ~~deliversend~~ send payments to COUNTY within 24-hours following the day the Transaction occurred by means of an electronic funds transfer ("EFT") to COUNTY's designated bank account. CONTRACTOR may delay a transaction that CONTRACTOR determines to be suspicious and warrants further investigation. COUNTY acknowledges that CONTRACTOR may reject, terminate or cancel any proposed transaction should CONTRACTOR determine the transaction is being made for an improper or illegal purpose. ~~CONTRACTOR shall provide COUNTY written notice of any transactions that are delayed, rejected or terminated by CONTRACTOR within 24 hours of CONTRACTOR delaying, rejecting and/or terminating a transaction.~~
  - c. CONTRACTOR will be responsible for responding to and resolving, within 24-hours all inmate and end-user inquiries and complaints arising out of CONTRACTORs failure to timely transmit transactions to the inmate trust account and/or any payment to COUNTY.
  - d. At no cost to COUNTY, CONTRACTOR shall provide all promotional materials for COUNTY to post.
  - e. CONTRACTOR, within 12-hours of COUNTY's written notice to CONTRACTOR, shall implement any requested limitations on any transactions.
  - f. At no cost to COUNTY, CONTRACTOR may contract with a third-party service provider to remove cash from kiosks, to replace receipt paper and to assume responsibility for the funds until deposited into the designated bank account. CONTRACTOR shall ensure either CONTRACTOR, or its third-party service provider, de-arm prior to entering COUNTY premises. County to provide an escort to accompany the third-party service provider removing cash from kiosks when provider is unarmed.
- 4. Responsibilities of COUNTY.**

  - a. COUNTY will provide CONTRACTOR with the required bank account information for transmission of an EFT. COUNTY agrees to provide CONTRACTOR notification of any changes to the bank account information within 14-days prior to said change.
  - b. COUNTY will, upon receipt of written documentation of overpayment from CONTRACTOR, refund any mutually agreed upon overpayment made by CONTRACTOR, within 10 business days. This is to include, but not be limited to, duplicate payments, payments ~~refunded to end-users~~ [HL32] and any overpayments by CONTRACTOR. In lieu of the foregoing, and upon mutual agreement between COUNTY and

- CONTRACTOR, CONTRACTOR may offset any such overpayments from future payment amounts transmitted by CONTRACTOR to COUNTY and notify COUNTY of any such offset.
- c. CONTRACTOR will provide all necessary labor, and will guarantee the workmanship of the installation, of the lobby kiosks including, but not limited to, material handling within the Facility and all costs associated with the networking, internet connectivity and electrical enhancements required to install the kiosks at the COUNTY Facilities, at no cost to COUNTY, and at COUNTY's direction.
- d. COUNTY agrees that CONTRACTOR may suspend, terminate or place restrictions on one or more end-users' ability to use the Services. ~~CONTRACTOR shall provide COUNTY 24-hour written notice prior to suspending, terminating and/or placing a restriction.~~
- 5. Rates.** The Services shall be provided at no cost to COUNTY. CONTRACTOR shall charge end-users initiating a Transaction a funding fee as defined in Attachment 1, Section G (Revenue Share and Fees).
- 6. Exclusivity.** CONTRACTOR has the exclusive right to provide the Services for COUNTY and the exclusive right to collect and receive funding fees associated with the Services.
- 7. Refunds/Chargebacks.**
- a. The Parties acknowledge that once CONTRACTOR accepts a transaction submitted to the applicable payment network or otherwise for processing, CONTRACTOR cannot cancel or change the transaction. Except to the extent required by applicable law, payments processed by CONTRACTOR are non-refundable to the end-user by CONTRACTOR or COUNTY. End-users may have additional refund or chargeback rights under their cardholder agreement with the card issuer or applicable law.
- b. In the case of chargebacks or returned funds, CONTRACTOR will be responsible for pursuing the chargeback through the card association's dispute resolution processes if appropriate in CONTRACTOR's sole discretion and at no cost to COUNTY or inmates housed at COUNTY's Facilities. Upon written request from CONTRACTOR, to the extent permitted by law, COUNTY agrees to provide requested information needed to assist CONTRACTOR's pursuit of the chargeback.
- c. If an end-user requests a refund, COUNTY and CONTRACTOR, will not be responsible for making those funds available if they have already been settled to a designated inmate trust account by CONTRACTOR.
- d. If COUNTY and sender of funds issue inconsistent instructions or requests to Keefe, County's instructions will control and County will reimburse, defend, indemnify and hold Keefe harmless from any and all losses, costs and expenses (including reasonable attorneys' fees) as a result of complying with County's instructions.[HL33]
- 8. Damages Cap; No Other Warranty.** OTHER THAN CONTRACTOR's OBLIGATION FOR ANY FUNDS RECEIVED FROM INDIVIDUALS, IN NO EVENT SHALL CONTRACTOR's AGGREGATE LIABILITY IN TOTAL FOR ALL CLAIMS ARISING FROM OR RELATING TO THE SERVICES PROVIDED FOR IN THIS EXHIBIT E, EXCEED THE AMOUNT OF SERVICE FEES PAID TO CONTRACTOR FOR THE TRANSACTIONS RELATING TO THE CLAIM. THE FOREGOING LIMITATION APPLIES REGARDLESS OF THE NATURE OF THE CLAIM OR THE FORM OF THE ACTION EMPLOYED, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE. THE SERVICES ARE PROVIDED "AS IS." EXCEPT AS EXPRESSLY STATED IN THIS EXHIBIT E, NEITHER PARTY MAKES, AND EACH PARTY EXPRESSLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES FOR THE SERVICES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR IMPLIED WARRANTIES ARISING FROM THE COURSE OF DEALING OR COURSE OF PERFORMANCE.[HL34]