



**COUNTY OF SANTA CLARA
SERVICE AGREEMENT**

SECTION I: GENERAL INFORMATION

Contractor Name: (As Displayed In SAP)	Sabot Technologies, Inc. dba Sabot Consulting		
Purchase Order Number:			
Agency/Department Name:	Department of Correction	Department Number:	0240
Brief Description of Services:	Conduct an analysis and comprehensive evaluation of DOC's ADA compliance as related to non-mobility disabilities, revise policies and procedures, and provide ADA training for all staff who have contact with inmates.		

Maximum Financial Obligation

The maximum amount payable to this Contractor under this agreement shall not exceed:	\$ 380,500.00
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Term of Agreement

Start Date: 09/29/2015	End Date: 09/29/2020
Note: When left blank, start date will be the date executed by Authorized County Representative	

For County Use Only

	Account Assignment	Plant Number	General Ledger (Expense Code)	Cost Center (Dept Code)	Amount	WBS (Capital Project Code)	Internal Order ("PCA" code - optional)
Line 1	H	0240	5255100	3400	\$240,500	Fiscal Year 2016	
Line 2	H	0240	5255100	3400	\$56,000	Fiscal Year 2017	
Line 3	H	0240	5255100	3400	\$42,000	Fiscal Year 2018	
Line 4	H	0240	5255100	3400	\$28,000	Fiscal Year 2019	
Line 5	Select	0240	5255100	3400	14,000	Fiscal Year 2020	



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SECTION II: PARTIES TO AGREEMENT

Legal notices and invoices pertaining to this Agreement shall be sent to the appropriate contact person listed below, except as otherwise specifically provided for herein. Notices shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows. Notice shall be deemed effective on the date that the notice is personally delivered or, if mailed, three (3) days after deposit in the mail. Either party may designate a different person and/or address for the receipt of notices by sending written notice to the other party, which shall not require an amendment to this Agreement.

Contractor

Contractor Name (As Displayed In SAP):	Sabot Technologies, Inc. dba Sabot Consulting				
Contact Person:	Mike Brady				
Street Address *:	101 Parkshore Drive				
City *:	Folsom	State:	CA	Zip:	95630
Telephone number *:	Office: 1-888-447-2268 / Mobile: 916-798-2504				
Email Address *:	Mike.Brady@sabotconsult.com				
SCC Vendor Number: (As Assigned in SAP)	0001036924				

* To be completed for Independent Contractors Only – DO NOT COMPLETE FOR DEPENDENT CONTRACTORS

County of Santa Clara

Agency/Department:	Department of Correction				
Program Manager/ Contract Monitor Name:	Capt. Kevin Heilman				
Street Address:	180 W. Hedding Street				
City:	San Jose	State:	CA	Zip:	95110
Telephone Number:	(408) 808-3643				
Fiscal Contact (Accounts Payable Contact):	Chwan-Fang Lee				
Contract Preparer:	Liza Capulong				



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SECTION III: CONTRACT AUTHORIZATION

It is agreed between County and Contractor that Contractor will, for the compensation described in this Agreement, perform the work described in Section V in accordance with all terms and conditions of this Agreement including all exhibits and attachments. In addition, County and Contractor assert that the tax withholding status and benefit documentation (Section IV) accurately reflect the anticipated working relationship between County and Contractor. Further, Independent Contractors shall comply with the County's insurance and indemnification requirements. Contractor certifies that any applicable insurance waiver information (Section VII, B) is true and correct. This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

SIGNATURES

Contract is not valid until signed by Contractor and County's Authorized Representative.

Agency/Department Manager:

Date: 9/14/15

Agency/Department Fiscal Officer:

Date: 9/16/15

Contractor: Sabot Technologies

Date: 9/10/2015

County Authorized Representative:

Date: SEP 29 2015

DAVE CORTESE

President, Board of Supervisors;

County Counsel:

Date: 9/16/15

(Signature required when the Standard Provisions language (Section VI) is revised, or for IT Services pursuant to Board Policy 5.3.5.2 (4), or for Board approved contracts, or for contracts with Board delegated authority to agencies/departments.)
Please note: Attachments or exhibits that include additional terms and conditions, conflict with the County's standard provisions or require risk assessment must be approved by County Counsel.

Office of the County Executive:

Date:

(Signature required when Board approved contract by a delegation of authority)

Attest Clerk of the Board:
MEGAN DOYLE

Date:

SEP 29 2015

(Signature required when Board approved contract)



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SECTION IV: DETERMINATION OF RELATIONSHIP STATUS

Dependent/Independent status is an important relationship distinction. It determines the contractor's eligibility for Medicare and Social Security, Public Employees' Retirement System benefits, and other benefits and affects how the contractor files tax returns and the contractor's responsibility for various federal and state taxes.

Questionnaire to be Completed by Contracting Department to Determine Relationship Status of Contractor

Supervision: Will the County have the right to tell the contractor how to do the work, when to arrive or leave work, or when to take breaks? Do you have other employees performing similar work with a similar degree of supervision? If the answer to any of these questions is YES, select YES from the dropdown. No

Training: Will the County instruct the contractor on how to do the job or pay for external training? No

Incomplete Work: Will the Contractor be able to resign or terminate the contract without being held either financially or legally liable for unfinished work? Yes

Place of Work/Tools: Will the County provide the Contractor with a place to work at a County location and tools to do the job, i.e. computers, telephones, etc? Yes

Length of Relationship: When the Contractor is hired to complete ongoing departmental duties or functions— answer YES. When the contractor is hired to complete a specific project that was not the regular tasks performed by County employees before— answer NO. No

Other Customers: Does the County prevent the Contractor from performing similar services for other customers, either due to the amount of work (full-time), or by contractual provision? No

Designation as Business Entity: If the Contractor has a business license or business certificate, or is a corporation, nonprofit organization, or school district, select "No" from the dropdown. (This does not pertain to professional licenses or certificates such as a license for a physician or architect.) No
Enter below the business license number and the city/entity where issued.

Bus Lic. # 15-00008895 Issued by: City of Folsom

Payment Schedule: Will payments be made either as an hourly wage or as weekly/monthly salary? If payment is by commission or based on project milestones or deliverables, answer "NO" to this question. Be sure this answer matches the contract payment schedule in Section V. No

Support Services: Will County employees or other independent contractors provide assistance to this Contractor? Assistance is defined as clerical, technical or professional support. No

If at least 5 of the above questions were answered "NO", Contractor is an **Independent Contractor**. ☒

If 5 or more of the above questions were answered "YES", Contractor is a **Dependent Contractor**, where the relationship resembles that of employer/employee. Tax withholding is required and benefits are provided. Complete and attach the following forms: Employee's Withholding Allowance Certificate—Federal Form W-4, State Withholding, Form DE-4, Determining PERS Eligibility and PERS Member Action Request. Visit www.oba for more information regarding Dependent Contractors. County insurance requirements do not apply to Dependent Contractors.

Contractor understands and agrees that the tax withholding and benefit status checked above is correct. Any changes to the contractor's tax withholding and benefit status require a new contract. Contractor is responsible for any penalties and liabilities assessed by any taxing authority, based on a change of tax withholding and benefit status.

Contractor's Initials:

MKS 9/16/2015

Dept. Fiscal Officer's Signature:

R 9/16/15



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SECTION V: CONTRACT SPECIFICS

A. SERVICE DESCRIPTION AND EXPECTED OUTCOME (SCOPE OF SERVICE)

Or ☒ See Attachment: A incorporated by this reference.

B. DELIVERABLES, MILESTONES, & TIMELINE FOR PERFORMANCE

Or ☒ See Attachment: A incorporated by this reference.



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C. PERFORMANCE STANDARDS

Or ☒ See Attachment: A incorporated by this reference.

D. PAYMENT SCHEDULE

Notes:

- All reimbursements for travel shall comply with the current County Travel Policy
- Dependent contractors are not permitted to work in excess of 40 hours per week

Or ☒ See Attachment A incorporated by this reference.



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SECTION VI: STANDARD PROVISIONS

Changes to the terms and conditions in this section require approval of County Counsel

A. ENTIRE AGREEMENT

This Agreement and its Appendices (if any) constitutes the final, complete and exclusive statement of the terms of the agreement between the parties. It incorporates and supersedes all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

B. AMENDMENTS

This agreement may only be amended by a written instrument signed by the Parties.

C. CONFLICTS OF INTEREST

Contractor shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.

In accepting this Agreement, Contractor covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not employ any contractor or person having such an interest. Contractor, including but not limited to contractor's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Contractor shall, upon execution of this Agreement, provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Contractor's employees, agents and subcontractors, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position," (2 CCR 18701(a)(2)), as part of Contractor's service to the County under this Agreement. Contractor shall immediately notify the County of the names and email addresses of any additional individuals later assigned to provide such service to the County under this Agreement in such a capacity. Contractor shall immediately notify the County of the names of individuals working in such a capacity who, during the course of the Agreement, end their service to the County.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Contractor shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in subsection (A) including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this Agreement, annually by April 1, and within 30 days of their termination of service pursuant to this Agreement.

D. GOVERNING LAW, VENUE

This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.

E. ASSIGNMENT

No assignment of this Agreement or of the rights and obligations hereunder shall be valid without the prior written consent of the other party.



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F. ASSIGNMENT OF CLAYTON ACT, CARTWRIGHT ACT CLAIMS

Contractor assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County pursuant to this Agreement.

G. WAIVER

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party shall be in writing and shall apply to the specific instance expressly stated.

H. NON-DISCRIMINATION



Standard Non-Discrimination Language

Contractor shall comply with all applicable Federal, State, and local laws and regulations including Santa Clara County's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

- OR -



Alternate Non-Discrimination Language Attached As Exhibit
(Requires County Counsel Approval)

, incorporated by this reference.

I. TERMINATION



Standard Termination Language

The County may, by written notice to Contractor, terminate all or part of this Agreement at any time for the convenience of the County. The notice shall specify the effective date and the scope of the termination. In the event of termination, Contractor shall deliver to County all documents prepared pursuant to the Agreement, whether complete or incomplete. Contractor may retain a copy for its records. Upon receipt of the documents, Contractor shall be compensated based on the completion of services provided, as solely and reasonably determined by County.

- OR -



Alternate Termination Language - See Attachment
(Requires County Counsel Approval)

A

, incorporated by this reference.

J. BUDGET CONTINGENCY

This Agreement is contingent upon the appropriation of sufficient funding by the County for the services covered by this Agreement. If funding is reduced or deleted by the County for the services covered by this Agreement, the County has the option to either terminate this Agreement with no liability occurring to the County or to offer an amendment to this Agreement indicating the reduced amount.

K. COUNTY NO-SMOKING POLICY

Contractor and its employees, agents and subcontractors, shall comply with the County's No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical



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Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

L. FOOD AND BEVERAGE STANDARDS

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by Contractor with County funds for County-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low fat and low calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, Contractor shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the Contractor should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County's nutritional criteria are (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, provided that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (*e.g.*, soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided.

M. CONTRACTING PRINCIPLES

All entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, all contractors shall: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the contract; (4) upon the County's request, provide the County reasonable access, through representatives of the Contractor, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

N. CALIFORNIA PUBLIC RECORDS ACT

All proposals become the property of the County, which is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Contractor's proprietary information is contained in documents submitted to County, and Contractor claims that such information falls within one or more CPRA exemptions, Contractor shall clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the County will make best efforts to provide notice to Contractor prior to such disclosure. If Contractor contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the County responds to the CPRA request. If Contractor fails to obtain such a remedy before the County responds to the CPRA request, County may disclose the requested information.

Contractor further agrees that it shall defend, indemnify and hold the County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by the Contractor.

O. THIRD PARTY BENEFICIARIES

This agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties.

P. INTELLECTUAL PROPERTY RIGHTS:

Ownership: County shall own all right, title and interest in and to the Deliverables. For purposes of this Agreement, the term "Deliverables" shall mean any documentation and deliverables created by Contractor during the performance of services that are identified in this Agreement. Contractor hereby assigns to the County all rights, title and interest in and to any and all intellectual property whether or not patentable or registrable under patent, copyright, trademark or similar statutes, made or conceived or reduced to practice or learned by Contractor, either alone or jointly with others, during the period of Contractor's agreement with the County or result from the use of premises leased, owned or contracted for by the County.



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Contractor acknowledges that all original works of authorship which are made by Contractor (either solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C. Section 101), and shall belong solely to County. Contractor agrees that the County will be the copyright owner in all copyrightable works of every kind and description created or delivered by Contractor, either solely or jointly with others, in connection with any agreement with the County.

Q. INTELLECTUAL PROPERTY INDEMNITY

Contractor represents and warrants for the benefit of the County and its users that, to its knowledge, as of the effective date of this Agreement, Contractor is the exclusive owner of all rights, title and interest in the Deliverables and/or services provided pursuant to this Agreement. Contractor shall defend, indemnify and hold the County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and reasonable attorney's fees) by a third party alleging the Deliverables and/or services provided pursuant to this Agreement infringe upon any intellectual property rights of third parties. This indemnity and duty to defend is in addition to and does not supersede the requirements stated in VII of this agreement.

R. OWNERSHIP RIGHTS TO MATERIALS / RESTRICTIONS ON USE

All materials obtained, developed or prepared by Contractor in the course of performing services hereunder, including but not limited to videotapes, audio recordings, still photographs, ads or brochures, and the derivative works, patent, copyright, trademark, trade secret or other proprietary rights associated therewith (collectively "Deliverables"), shall be the sole and exclusive property of the County. To the extent Contractor owns or claims ownership rights to said Deliverables, Contractor hereby expressly assigns all said rights, title, and interest in and to the Deliverables to the County pursuant to the terms and conditions of this Agreement and at no additional cost. The County has the exclusive royalty-free irrevocable right to duplicate, publish or otherwise use for any purpose, all materials prepared under this Agreement. If Contractor wishes to use the materials prepared hereunder for any purpose including but not limited to promotional, educational or commercial purposes, the Contractor shall obtain prior written authorization from the County, which consent may be withheld by the County in its sole discretion. Contractor acknowledges that all original works of authorship which are made by Contractor (solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C., Section 101), and shall belong solely to County. Contractor agrees that the County will be the copyright owner in all copyrightable works of every kind and description created or developed by Contractor, solely or jointly with others, in connection with any agreement with the County. If requested to, and at no further expense to the County, Contractor will execute in writing any acknowledgments or assignments of copyright ownership of such copyrightable works as may be appropriate for preservation of the worldwide ownership in the County and its nominees of such copyrights. This section shall apply to the extent not otherwise provided under this agreement.

S. COUNTY DATA

"County Data" shall mean data and information received by Contractor from County. As between Contractor and County, all County Data shall remain the property of the County. Contractor shall not acquire any ownership interest in the County Data. Contractor shall not, without County's written permission consent, use or disclose the County Data other than in the performance of its obligations under this Agreement. Contractor shall be responsible for establishing and maintaining an information security program that is designed to ensure the security and confidentiality of County Data, protect against any anticipated threats or hazards to the security or integrity of County Data, protect against unauthorized access to or use of County Data that could result in substantial harm or inconvenience to County or any end users; and ensure the proper disposal of County data upon termination of this Agreement. Contractor shall take appropriate action to address any incident of unauthorized access to County Data, including addressing and/or remedying the issue that resulted in such unauthorized access, notifying County as soon as possible of any incident of unauthorized access to County Data, or any other breach in Contractor's security that materially affects County or end users; and be responsible for ensuring compliance by its officers, employees, agents, and subcontractors with the confidentiality provisions hereof. Should confidential and/or legally protected County Data be divulged to unauthorized third parties, Contractor shall comply with all applicable federal and state laws and regulations, including but not limited to California Civil Code Sections 1798.29 and 1798.82 at Contractor's sole expense (if applicable). Contractor shall not charge the County for any expenses associated with Contractor's compliance with the obligations set forth in this section.

T. WAGE THEFT PREVENTION

(1) Compliance with Wage and Hour Laws: Contractor, and any subcontractor it employs to complete work under this Agreement, must comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or Living Wage Ordinance.

(2) Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted. Relevant investigatory government agencies include: the federal Department of



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Labor, the California Division of Labor Standards Enforcement, a local enforcement agency, or any other government entity tasked with the investigation and enforcement of wage and hour laws.

(3) Prior Judgments against Contractor and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS, OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING—IN THE FIVE YEARS PRIOR TO EXECUTING THIS AGREEMENT—THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH—OR HAS REACHED AGREEMENT WITH THE COUNTY REGARDING THE MANNER IN WHICH IT WILL SATISFY—ANY SUCH JUDGMENTS, DECISIONS, OR ORDERS.

(4) Judgments During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision, or order finding that Contractor or any subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed, Contractor must inform the Office of the County Executive—Office of Countywide Contracting Management (OCCM), no more than 15 days after the judgment, decision, or order becomes final or of learning of the final judgment, decision, or order. Contractor and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the Office of the County Executive—OCCM with documentary evidence of compliance with the final judgment, decision, or order within 5 days of satisfying the final judgment, decision, or order. The County reserves the right to require Contractor to enter into an agreement with the County regarding the manner in which any such final judgment, decision, or order will be satisfied.

(5) County's Right to Withhold Payment: Where Contractor or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision, or order of a court or government agency, the County reserves the right to withhold payment to Contractor until such judgment, decision, or order has been satisfied in full.

(6) Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for termination of this Agreement and/or any other remedies available under this Agreement and/or law.

(7) Notice to County Related to Wage Theft Prevention: Notice provided to the Office of the County Executive as required under this Section shall be addressed to: Office of the County Executive—OCCM; 70 West Hedding Street; East Wing, 11th Floor; San José, CA 95110. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

U. PAYMENT TERM

The parties agree that the payment term shall be the term selected below and payment shall be due in accordance with the selected payment term. For example, if Contractor selects 2.25% 10 Net 45 as the payment term, payment shall be due 10 days from the date the County approves the invoice, instead of 45 days, and the County shall take a discount of 2.25% of the total amount of the invoice. Payment is deemed to have been made on the date the County mails the warrant or initiates the electronic fund transfer.

<input type="checkbox"/>	2.25% 10 Net 45 (provides 35 days of cash acceleration)
<input type="checkbox"/>	2.00% 15 Net 45 (provides 30 days of cash acceleration)
<input type="checkbox"/>	1.75% 20 Net 45 (provides 25 days of cash acceleration)
<input type="checkbox"/>	1.33% 25 Net 45 (provides 20 days of cash acceleration)
<input type="checkbox"/>	1.00% 30 Net 45 (provides 15 days of cash acceleration)
<input checked="" type="checkbox"/>	Net 45 (full payment)

Note: Payment term will default to "Net 45 (full payment)", if no other term was selected.

Notwithstanding the option selected above, the parties agree that at any time during the contract term, either party may initiate an early payment discount on an invoice-by-invoice basis utilizing the Dynamic Discounting functionality of the Ariba Network. Contractor must have a registered account on the Ariba Network to utilize this functionality.

V. CONTRACT EXECUTION

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.



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W. LIVING WAGE (If Applicable)

Unless otherwise exempted or prohibited by law or County policy, where applicable, Contractors that contract with the County to provide Direct Services developed pursuant to a formal Request for Proposals process, as defined in County of Santa Clara Ordinance Code Division B36 ("Division B36") and Board Policy section 5.5.5.5 ("Living Wage Policy"), and their subcontractors, where the contract value is \$100,000 or more ("Direct Services Contract"), must comply with Division B36 and the Living Wage Policy and compensate their employees in accordance with Division B36 and the Living Wage Policy. Compliance and compensation for purposes of this provision includes, but is not limited to, components relating to fair compensation, earned sick leave, paid jury duty, fair workweek, worker retention, fair chance hiring, targeted hiring, local hiring, protection from retaliation, and labor peace. If Contractor and/or a subcontractor violates this provision, the Board of Supervisors or its designee may, at its sole discretion, take responsive actions including, but not limited to, the following:

- (a) Suspend, modify, or terminate the Direct Services Contract.
- (b) Require the Contractor and/or Subcontractor to comply with an appropriate remediation plan developed by the County.
- (c) Waive all or part of Division B36 or the Living Wage Policy.

This provision shall not be construed to limit an employee's rights to bring any legal action for violation of the employee's rights under Division B36 or any other applicable law. Further, this provision does not confer any rights upon any person or entity other than the Board of Supervisors or its designee to bring any action seeking the cancellation or suspension of a County contract. By entering into this contract, Contractor certifies that it is currently complying with Division B36 and the Living Wage Policy with respect to applicable contracts, and warrants that it will continue to comply with Division B36 and the Living Wage Policy with respect to applicable contracts.

SECTION VII: INSURANCE / INDEMNIFICATION

Independent Contractors shall comply with the County's insurance and indemnification requirements as indicated below. These requirements do not apply to Dependent Contractors.

A. TYPE OF INSURANCE LANGUAGE

<input checked="" type="checkbox"/>	The following standard insurance and indemnification language is attached and incorporated into this agreement:
	B-3 Professional Services Contracts (e.g. Medical, Legal, Financial, etc.)
<input type="checkbox"/>	Modification or Waiver Attached if Appropriate

B. DETERMINATION OF INSURANCE REQUIREMENTS AND WAIVER DECLARATION

Workers Compensation: Does the contractor have employees? If "YES", then, WORKER'S COMPENSATION/EMPLOYER'S LIABILITY INSURANCE IS REQUIRED.	Yes
Owned Auto Insurance: Will the contractor use any owned autos in the provision of direct services, such as transporting clients in autos or operating autos in performance of the work itself? If "YES", then INSURANCE FOR OWNED AUTOS IS REQUIRED.	Yes
Hired Auto Insurance: Will the contractor use any hired autos in the provision of direct services, such as transporting clients in autos or operating autos in performance of the work itself? If "YES", then INSURANCE FOR HIRED AUTOS IS REQUIRED.	No



**COUNTY OF SANTA CLARA
SERVICE AGREEMENT**

Non-owned Auto Insurance:

Will the contractor be using any non-owned autos in the provision of direct services, such as transporting clients in non-owned autos or operating non-owned autos in performance of the work itself?
If "YES" then, INSURANCE FOR NON-OWNED AUTOS IS REQUIRED.

No

When "NO" is checked, this declaration will serve as a waiver for the specified type of insurance.

SECTION VIII: FEDERAL/STATE REQUIRED PROVISIONS

(Examples include Drug-free Workplace Activity, Health Insurance Portability and Accountability Act (HIPAA), Business Associate Language, etc)

☐

A. Federal Required Language Attached

Only add special language if services included in the contract require language different from or in addition to that in Section VI.

Exhibit Name:

☐

B. State Required Language Attached

Only add special language if services included in the contract require language different from or in addition to that in Section VI.

Exhibit Name:

The Exhibits named above are attached and incorporated by this reference.

SECTION IX: ADDITIONAL ATTACHED EXHIBIT(S)

Attachments and exhibits that conflict with County standard provisions or require risk assessment must be approved by County Counsel. Examples of attachments that require County Counsel approval are:

- 1) Contractor's terms and conditions that are different than, or add to the standard provisions language,
- 2) Any changes to the language in Section VI—Standard Provisions.

Exceptions to County Counsel review include attachments that further explain the Contract Specifics as outlined in Section V, and insurance exhibits.

☒

Exhibit Name(s)

Exhibit 1 - Business Associate Agreement

The Exhibits named above are attached and incorporated by this reference.

ATTACHMENT A CONTRACT SPECIFICS

A. Scope of Service / Deliverables, Milestones, and Timeline for Performance

1. Contractor shall conduct a comprehensive analysis of the Department of Correction's (DOC) Americans with Disabilities Act (ADA) compliance as they relate to non-mobility disabilities and provide a report to County Counsel by **December 31, 2015**. The report shall be subject to attorney-client privilege and shall be labeled as such.
2. Contractor shall review and revise all Department of Correction (DOC) policies, procedures, POST Orders, forms, and Inmate Orientation book to ensure that the DOC is ADA-compliant.
 - 2.1 The review shall be completed by **March 1, 2016**.
 - 2.2 Contractor shall provide a report with all recommended changes by **March 1, 2016**.
3. Beginning **December 2015**, Contractor shall provide an 8-hour, department-wide ADA training to all staff identified by DOC management.
 - 3.1 Each class will have a minimum of 25 trainees.
 - 3.2 Each class shall accommodate the trainees' work schedules and shall be conducted during the dates and time identified by DOC management. Classes may be held at any time during the morning, afternoon, or evening on any day of the week, including weekends, as required by the DOC.
 - 3.3 Trainings shall be completed by **December 2016**, unless extended by DOC management for scheduling purposes.
4. Contractor shall provide one 40-hour Train-the-Trainer ADA training to DOC employees at a date and time identified by DOC management.
 - 4.1 There will be no limit on the number of trainees.
 - 4.2 The training may be held at any time during the morning, afternoon, or evening at any day of the week, including weekends, as required by the DOC.
 - 4.3 The training shall be completed by **June 2016**, unless extended by DOC management for scheduling purposes.
5. Contractor shall monitor DOC's compliance with ADA requirements and guidelines, and shall make all necessary improvements, changes, and adaptations to ensure that the DOC is ADA compliant.

- 5.1 Contractor shall conduct on-site monitoring, write reports, and review documents to ensure the DOC's ADA compliance.
- 5.2 The monitoring schedule will be as follows, unless otherwise revised by DOC management for scheduling purposes:
 - 2016 – (Quarterly) January, April, July, October
 - 2017 – (Quarterly) January, April, July, October
 - 2018 – (Biannually) April, October
 - 2019 – (Biannually) April, October

B. Performance Standards

1. Contractor must provide ADA evaluators who have demonstrated expertise in federal and state disability laws as they relate to (a) policies, procedures and practices for inmates with disabilities in the correctional facility context; and (b) architectural access for inmates with disabilities in correctional facilities.
2. Contractor, evaluators, and contractor's employees or agents who need access to jail facilities must pass the Sheriff's Office/Department of Correction (SO/DOC) security clearance process prior to being allowed access to the facility.
3. Contractor and its employees, agents, and/or representatives:
 - (a) Are prohibited from having any sexual contact or any other inappropriate contact with inmates of the SO/DOC during the term of this Agreement;
 - (b) Shall not engage in any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature towards inmates and/or staff of the SO/DOC; and
 - (c) Shall comply with the SO/DOC's zero-tolerance policy related to the sexual assault or rape of offenders/inmates, or sexual misconduct toward any offender/inmate.
4. Contractor and its employees, agents, and/or representatives who may have contact with inmates shall be provided a pamphlet titled "Sexual Assault Awareness". Everyone who receives the pamphlet shall sign the acknowledgment form which will be retained by the SO/DOC.
5. Contractor and its employees, agents, and/or representatives who come into Santa Clara County jail facilities must abide by the SO/DOC's rules, regulations, policies and procedures.
6. Contractor will comply with the provisions of the Business Associate Agreement attached hereto as **Exhibit 1**.

C. Termination

The County may, by sixty (60) days' written notice to Contractor, terminate all or part of this Agreement at any time for the convenience of the County. The notice shall specify the effective date and the scope of the termination. In the event of termination, Contractor shall deliver to County all documents prepared pursuant to the Agreement, whether complete or incomplete. Contractor may retain a copy for its records. Upon receipt of the documents, Contractor shall be compensated based on the completion of services provided, as solely and reasonably determined by County.

D. Payment Schedule

1. Contractor shall invoice the County a **maximum of \$10,000** upon completion of the ADA analysis report relating to non-mobility disabilities. Contractor may invoice the County for partial completion, subject to the approval of County Counsel. All partial invoices will be based on the percentage of work that has been completed by Contractor.
2. Contractor shall invoice the County a **maximum of \$70,000** upon completion of all revisions to DOC's policies, procedures – including use of force policies and procedures – POST Orders, forms, and Inmate Orientation book. Contractor may invoice the County for partial completion, subject to the approval of County Counsel. All partial invoices will be based on the percentage of work that has been completed by Contractor.
3. Contractor shall invoice the County **\$100 per person** for the 8-hour ADA training. Each invoice shall reflect a **15% discount**.
 - 3.1 The 15% discount is contingent upon the number of trainees reaching 1,000 within a one-year period commencing from the date of the first training. If the number of trainees is less than 1,000 during that one-year period, the discounted amount shall be added to the last invoice.
 - 3.2 Contractor shall submit a class roster that indicates the trainees' first name, last name, and badge number (if applicable) with each invoice.
4. Contractor shall invoice the County a **maximum of \$2,500** upon completion of the 40-hour Train-the-Trainer ADA training, regardless of the number of trainees.
 - 4.1 Contractor shall submit a class roster that indicates the trainees' first name, last name, and badge number (if applicable) with each invoice.
5. Contractor shall monitor the DOC's ADA compliance and make all necessary improvements, changes, and adaptations to ensure that the DOC is ADA compliant.
 - 5.1 Contractor will invoice the County a **maximum of \$150 per hour** for on-site monitoring, report writing, and document review; and shall not exceed the

following total each fiscal year, unless approved in writing by County Counsel.

Fiscal Year 2016 = JAN & APR 2016.....	\$28,000.00
Fiscal Year 2017 = JUL & OCT 2016 + JAN & APR 2017	\$56,000.00
Fiscal Year 2018 = JUL & OCT 2017 + APR 2018	\$42,000.00
Fiscal Year 2019 = OCT 2018 & APR 2019	\$28,000.00
Fiscal Year 2020 = OCT 2020	\$14,000.00

5.2 Each invoice shall include the following information:

- Name of the person who conducted the work
- Per hour rate of each person
- Summary of the work performed by each person
- Total number of hours worked by each person

6. The County will not pay late payment charges, interest or fees.

EXHIBIT 1

BUSINESS ASSOCIATE AGREEMENT

WHEREAS, County of Santa Clara ("County" or "Covered Entity") is a Covered Entity, as defined below, and wishes to disclose certain Protected Health Information ("PHI") to Sabot Technologies, Inc. dba Sabot Consulting ("Business Associate") pursuant to the terms of the Agreement and this Business Associate Agreement ("BAA"); and

WHEREAS, the County is a hybrid entity pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") performing both covered and non-covered functions; and

WHEREAS, the Santa Clara Valley Health and Hospital System, which is part of the County is comprised of multiple County Departments, including Valley Medical Center and Clinics ("VMC"), the County Mental Health Department ("MHD"), the County Department of Alcohol and Drug Services ("DADS"), the County Public Health Department ("PHD") and the County Custody Health Services ("Custody Health") and County Valley Health Plan ("VHP"), all of which are "Covered Entities" under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"); and

WHEREAS, the Covered Entity and Business Associate are "qualified service organizations" or "QSO" within the meaning of the federal law governing Confidentiality of Alcohol and Drug Abuse Patient Records and its implementing regulations, 42 Code of Federal Regulations ("C.F.R.") Part 2; and

WHEREAS, the Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI used and disclosed pursuant to this BAA in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations"), California Welfare & Institutions Code 5328, 42 U.S.C. Section 290dd-2, 42 C.F.R part 2, California Confidentiality of Medical Information Act Civil Code Section 56, California Health & Safety Code 1280.15, and other applicable laws; and to the extent the Business Associate is to carry out the covered entity's obligation under the Privacy Rule, the Business Associate must comply with the requirements of the Privacy Rule that apply to the covered entity in the performance of such obligation.

WHEREAS, part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entities to enter into a contract containing specific requirements with any 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.

NOW, THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to the BAA, the parties agree as follows:

I. Definitions

Terms used, but not otherwise defined, and terms with initial capital letters in the BAA have the same meaning as defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005, and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

Privacy Breach Any acquisition, access, use or disclosure of Protected Health Information in a manner not permitted or allowed under state or federal privacy laws.

Business Associate is a person, organization, or agency other than a workforce member that provides specific functions, activities, or services that involve the use, creation, or disclosure of PHI for, or on behalf of, a HIPAA covered health care component. Examples of business associate functions are activities such as claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, repricing; and legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.

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.

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.

Electronic Protected Health Information means Protected Health Information that is maintained in or transmitted by electronic media.

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.

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.

Privacy Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

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

160.103. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].

Protected Information shall mean PHI provided by Covered Entity to Business Associates or created or received by Business Associates on Covered Entity's behalf.

Security Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

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)(1) and 45 C.F.R. 164.402.

II. Duties & Responsibilities of Business Associates

- a. Permitted Uses.** Business Associate shall use Protected Information only for the purpose of performing Business Associate's obligations under the Contract and as permitted or required under the Contract or Addendum, or as required by law.

Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule, Welfare & Institutions Code Section 5328, 42 C.F.R. Part 2, 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 164.502(a)(3), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].

- b. 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, 42 C.F.R., Welfare & Institutions Code Section 5328, or the HITECH Act if so disclosed by Covered Entity. However, Business Associates 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 obtained pursuant to the Agreement and this BAA 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 within twenty-four (24) hours of discovery, to the extent it

has obtained knowledge of such Breach. [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i)-(ii)(A) and 164.504(e)(4)(ii)].

- c. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. [42 U.S.C. Section 17936(a) and 45 C.F.R. 164.501]. Business Associate shall not disclose Protected Information to a health plan for payment or health care operations purposes if the Individual 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); 45 C.F.R. Section 164.502(a)(5)(ii)]. 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)]. This prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement.
- d. **Appropriate Safeguards.** Business Associate shall implement appropriate administrative, technological and physical safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by this BAA that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, and comply, where applicable, with the HIPAA Security Rule with respect to Electronic PHI.
- e. **Reporting of Improper Access, Use or Disclosure.** Consistent with Section (h)(4) of this agreement, Business Associate shall notify Covered Entity within twenty – four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Contract or Addendum; any security incident (i.e. any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in any information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by Business Associate or its agents or subcontractors.

Business Associate shall report to SCVHHS Compliance & Privacy Officer in writing any access, use or disclosure of Protected Information not permitted by the Agreement and this BAA. As set forth below, [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); California Health & Safety Code 1280.15, California Confidentiality of Medical Information Act 56.10, California Welfare & Institutions 5328].

Compliance & Privacy Officer
Santa Clara Valley Health & Hospital System
2325 Enborg Lane, Suite 240
San Jose, California 95128
Facsimile: (408) 885-6886
Telephone: (408) 885-3794

The Breach notice must contain: (1) a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known; (2) the location of the breached information; (3) the unauthorized person who used the PHI or to whom the disclosure was made; (4) whether the PHI was actually acquired or viewed; (5) a description of the types of PHI that were involved in the Breach; (6) safeguards in place prior to the Breach; (7) actions taken in response to the Breach; (8) any steps Individuals should take to protect themselves from potential harm resulting from the Breach; (9) a brief description of what the business associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against further Breaches; and (10) contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website or postal address. [45 C.F.R. Sections 164.410(c) and 164.404(c)]. Business Associate shall take any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Business Associate shall otherwise comply with 45 C.F.R. Section 164.410 with respect to reporting Breaches of Unsecured PHI. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 165.308(b)]

- f. Business Associate's Agents and Subcontractors.** Business Associate shall ensure that any agents or 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 (II) d above with respect to Electronic PHI. [45 C.F.R. Sections 164.502(e)(1)(ii), 164.504(e)(2)(ii)(D) and 164.308(b)]. If Business Associate knows of a pattern of activity or practice of an agent or subcontractor that constitutes a material breach of violation of an agent or subcontractor's obligations under the Contract or Addendum or other arrangement, the Business Associate must take reasonable steps to cure the breach or end the violation. If these steps are unsuccessful, Business Associate shall terminate the contract or arrangement with agent or subcontractor, if feasible. [45 C.F.R. Section 164.504(e)(1)(iii)]. Business Associate shall provide written notification to Covered Entity of any pattern of activity or practice of a subcontractor or agent that Business Associate believes constitutes a material breach or violation of the agent or subcontractor's obligations under the Contract or Addendum or other arrangement with twenty four (24) hours 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.

The 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.

- g. Access to Protected Information.** 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 ten (10) days of a request by Covered Entity to enable Covered Entity to

fulfill its obligations under 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); 42 C.F.R. part 2 and Welfare & Institutions Code Section 5328]. If Business Associate maintains an Electronic Health Record, Business Associates 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)(1). If any Individual requests access to PHI directly from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity in writing within five (5) days of the request.

h. Electronic PHI. If Business Associate receives, creates, transmits or maintains Electronic PHI on behalf of Covered Entity, Business Associates will, in addition, do the following:

- (1) Develop, implement, maintain and use appropriate administrative, physical, and technical safeguards in compliance with Section 1173(d) of the Social Security Act, Title 42, Section 1320(s) or the United States Code and Title 45, Part 162 and 164 of CFR to preserve the integrity and confidentiality of all electronically maintained or transmitted PHI received from or on behalf of Covered Entity.
- (2) Document and keep these security measures current and available for inspection by Covered Entity.
- (3) Ensure that any agent, including a subcontractor, to whom the Business Associate provides Electronic PHI, agrees to implement reasonable and appropriate safeguards to protect it.
- (4) Report to the Covered Entity any Security Incident of which it becomes aware. For the purposes of this BAA and the Agreement, Security Incident means, as set forth in 45 C.F.R. Section 164.304, “the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.” Security incident shall not include, (a) unsuccessful attempts to penetrate computer networks or servers maintained by Business Associate, or (b) immaterial incidents that occur on a routine basis, such as general “pinging” or “denial of service” attacks.

i. Amendment of PHI. 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. 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.

- j. **Accounting Rights.** Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Privacy Rule and the HITECH Act. [42 U.S.C. Section 17935(c) and 45 C.F.R. Section 164.528]. Business Associate agrees to implement a process that allows for an accounting of disclosures to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. Accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for three (3) years prior to the request, and only to the extent 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. [45 C.F.R. Section 164.528(b)]. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall forward it to Covered Entity in writing within five (5) days of the request. 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 the Agreement and this BAA.

- k. **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 (the "Secretary") for purposes of determining Business Associate's compliance with the Privacy Rule [45 C.F.R. Section 165.504(e)(2)(ii)(I). Business Associate shall concurrently provide to Covered Entity a copy of any internal practices, books, and records relating the use and disclosure of PHI that Business Associate provides to the Secretary.
- l. **Minimum Necessary.** Business Associate and its agents or subcontractors shall request, use and disclose only the minimum amount of Protected Information reasonably necessary to accomplish the purpose of the request, use, or disclosure in accordance with 42 U.S.C. Section 17935(b). Business Associate understands and agrees that the definition of "minimum necessary" is defined in HIPAA and may be modified by the Secretary. Each party has an obligation to keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."

- m. **Adherence to the Requirements of 42 C.F.R.** Business Associate acknowledges that in receiving, transmitting, transporting, storing, processing or otherwise dealing with patient records and information in connection with providing drug testing services to patients covered by SCVHHS under this Agreement and BAA, it is fully bound by the regulations governing confidentiality of alcohol and drug abuse patient records, 42 C.F.R. Section 2.1, *et seq.*, and HIPAA, and may not use or disclose the information except as permitted or required by this BAA or applicable law.
- n. **Resist Efforts in Judicial Procedures.** Business Associates agree to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Records, 42 C.F.R. Part 2.
- o. **Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information governed by this BAA, and all rights, interests, and title remain vested in the County at all times.
- p. **Warranties and Disclosures.** Business Associate assumes risk for any and all use of PHI. SCVHHS assumes no liability or responsibility for any errors or omissions in, or reliance upon, the PHI, including, but not limited to information electronic systems. SCVHHS makes no representations or warranties of any kind, express or implied, including but not limited to: accuracy, completeness, or availability of content, non-infringement, merchantability or fitness for a particular use or purpose, the fullest extent of the law. SCVHHS does not warrant that PHI is free of viruses or other harmful components or that service will be uninterrupted or error-free, or that defects will be corrected.
- q. **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 the 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 BAA, Business Associate shall notify Covered Entity within five (5) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

III. Termination

- a. **Material Breach.** A Breach by Business Associate of any provision of this BAA 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)].
- b. **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, 42 C.F.R. Part 2, 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, 42 C.F.R. Part 2, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. **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, Business Associate shall continue to extend the protections of Section 2 of the 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 County elects destruction of the PHI, Business Associate shall certify in writing to County that such PHI has been destroyed.

IV. General Provisions

- a. **Indemnification.** In addition to the indemnification language in the Agreement, Business Associate agrees to be responsible for, and defend, indemnify and hold harmless the Covered Entity for any Breach of Business Associate's privacy or security obligations under the Agreement, including any fines, penalties and assessments that may be made against Covered Entity or the Business Associate for any privacy breaches or late reporting and agrees to pay the cost of and notice for any credit monitoring services.
- b. **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 use and safeguarding of PHI.

- c. **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 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 California laws relating to the security or confidentiality of PHI.
- d. Upon the request of any party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to the BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable California laws relating to the security or confidentiality of PHI.

Covered Entity may terminate Contract upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Contract or Addendum when requested by Covered Entity pursuant to this section or (ii) Business Associate does not enter into an amendment to the Contract or Addendum 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.

- e. **Assistance in Litigation of Administrative Proceedings.** Business associate shall notify Covered Entity within forty-eight (48) hours of any litigation or administrative proceedings commenced against Business Associate or its agents or subcontractors. Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement or 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 as an adverse party.
- f. **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 Entities, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- g. **Effect on Agreement.** Except as specifically required to implement the purposes of the BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.

- h. Interpretation.** The BAA 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, 42 Code of Federal Regulations (“C.F.R.”) Part 2, the Privacy Rule and the Security Rule and other applicable California laws relating to the security or confidentiality of PHI.
- i. Governing Law, Venue.** This agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.
- j. Survivorship.** The respective rights and responsibilities of Business Associate related to the handling of PHI survive termination of this Agreement.

EXHIBIT B-3 (revised)

INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS (e.g. Medical, Legal, Financial services, etc.)

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

EXHIBIT B-3 (revised)

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate - \$2,000,000
 - c. Personal Injury - \$1,000,000
2. General liability coverage shall include:
 - a. Premises and Operations
 - b. Personal Injury liability
 - c. Severability of interest
3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

EXHIBIT B-3 (revised)

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to owned, non-owned and hired vehicles.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Professional Errors and Omissions Liability Insurance

- a. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars (\$50,000) per occurrence/event.
- c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

7. Claims Made Coverage

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

EXHIBIT B-3 (revised)

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.