

FIRST AMENDMENT TO
COMMISSARY SERVICES AGREEMENT

This First Amendment ("**Amendment**") to the Commissary Services Agreement is made by and between Keefe Commissary Network, LLC ("**Keefe**") and the County of Humboldt, a political subdivision of the State of California ("**County**"), and is entered into this 1st day of November, 2023. The County and Keefe are referred to herein jointly as the "**Parties**."

WHEREAS, the Parties entered into the Commissary Services Agreement dated August 1, 2018 (the "**Agreement**") whereby Keefe provides commissary services for the County; and

WHEREAS, the Parties desire to modify provisions regarding the tablet program and add information regarding the tablet program to the Agreement; and

WHEREAS, the Parties desire to reduce the commission paid for commissary items from 40% to 35%; and

WHEREAS, the Parties desire to specify that the commission paid on the package program will be 35%; and

WHEREAS, the Parties desire to extend the Agreement for three (3) years; and

WHEREAS, the Parties desire to add provisions for Inmate Vending services to the Agreement; and

WHEREAS, the Parties desire to add provisions for Release Pay services to the Agreement.

NOW, THEREFORE, in consideration of the forgoing facts, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Section 5(a) of the Agreement is deleted in its entirety and replaced as follows.
"Tablets. Keefe, through its approved subcontractor ViaPath, will offer a tablet technology services solution for use by the inmates at County's facility which is known as the Secure Inmate Tablet program. The Secure Inmate Tablet program is described in Exhibit E which is attached hereto and by this reference made a part of this Agreement."
2. Section 8. **COMMISSION**. The commission rate in Section 8 is changed from "forty percent (40%)" to "thirty-five percent (35%)".
3. Section 10. **PACKAGE PROGRAM**. The following provision is added to the end of Section 10.
"County will be paid a commission for this service equal to **35%** of all final Securepak sales made on behalf of inmates at County's facility minus any sales tax, returns, processing fee, refunds and/or chargebacks resulting from or arising out of the sales. Keefe shall deliver Securepak orders to County's facility once per week. County agrees

that Keefe may charge a processing fee for each order which may be amended by Keefe from time to time.”

4. Section 12. **TERM.** Section 12 is deleted in its entirety and replaced as follows.
“12. **TERM.** This Agreement shall become effective as of August 1, 2018 and shall continue in effect for a period of eight (8) years (the “Base Term”), unless sooner terminated as provided herein. The Agreement will automatically renew for two successive one-year terms thereafter, unless either party to this Agreement gives notice in writing to the other party no less than ninety (90) days prior to the expiration of any term or extended term that the party so giving notice does not wish to extend this Agreement.”
5. Section 44 is added to the Agreement as follows.
“44. **RELEASE PAY SERVICE.** This Agreement includes Keefe’s Release Pay™ Service, the terms of which are memorialized in Exhibit F, entitled “Release Pay™ Prepaid Debit Card Release,” attached hereto and incorporated herein. Except as provided for herein, no fees for this service will be borne by County.”
6. Section 45 is added to the Agreement as follows.
“45. **INMATE VENDING.** Keefe will provide vending services to County which includes the vending hardware agreed upon by the parties (“Vending Hardware”) as well as the stocking and restocking of vending items. County agrees that Keefe may place the Vending Hardware in mutually agreeable locations throughout County’s facility and sell vending items to inmates at County’s facility. County shall provide the A/C power necessary to run the Vending Hardware at its sole cost. County agrees that all Vending Hardware is the sole property of Keefe, and agrees to return the Vending Hardware to Keefe in workable order upon the expiration or earlier termination of this Agreement. Any Vending Hardware damaged by inmates will be repaired or replaced by Keefe and viewed as a recoverable cost to be recouped from the inmate(s) who damaged the hardware. Vending item selection and pricing will be agreed upon by Keefe and County. Vending item menu selection and price adjustments will be reviewed as needed, but no less than annually. Keefe agrees to pay County a commission equal to **35%** of all final vending item sales less any sales tax and refunded items. Keefe will provide a staff member to manage the vending machine operation which includes product ordering and vending replenishment. The County agrees to provide secure space to Keefe at no charge for the vending machine program.
7. Exhibits E and F, attached hereto and fully incorporated herein, are added as exhibits to the Agreement.
8. Except as expressly stated herein, all of the terms and conditions of the Agreement will remain in full force and effect. Except as modified herein, the Agreement entered into on August 1, 2018, shall remain in full force and effect. In the event of a conflict between the provisions of this First Amendment and the original Agreement, the provisions of this First Amendment shall govern.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands and seals effective as of the day and year first above written.

COUNTY OF HUMBOLDT

Rex H Bohn

By:

Rex Bohn

Name

Vice Chair - Board of Supervisors

Title:

11/1/2023

Date:

KEEFE COMMISSARY NETWORK, LLC

John Puricelli

By:

John Puricelli

Name:

Executive Vice President/General Manager

Title:

10/30/2023

Date:

Exhibit E

DESCRIPTION OF SERVICES SECURE INMATE TABLET PROGRAM

FEATURES

The following features are included on all tablets at no cost to the County:

NOW, THEREFORE, for and in consideration of the mutual benefits to be received by the Parties to this Addendum, the Parties agree as follows:

1. Keefe will provide an additional service under the terms of the Agreement which service is known as and referred to herein as the Secure Inmate Tablet program.

2. There will be no fee charged to or paid by the County for participation in the Secure Inmate Tablet program. Fees to inmates using the paid services on the tablet at a per-minute based rate shall be no more than \$.05 unless the County approves a modification of the rate. During the program, Tablet Provider will run promotions and offer paid services at reduced rates. Keefe will pay the County a commission equal to ten percent (10%) percent of tablet revenue received from inmates who utilize the services which are available via the ViaPath Secure Tablet program after one year of tablet implementation. The commission procedures shall be the same procedures as are currently in place for commissary commissions.

3. Additional Add on costs: Humboldt County Juvenile Hall will be charged a monthly fee for the Juvenile tablet program of \$50.00 per month per tablet. The monthly fee allows juvenile inmates free access to music, media and other approved applications at no cost. The quantity is subject to change monthly. KCN will bill Humboldt County Juvenile Hall each month based on tablet count deployed.

Humboldt County Juvenile Hall will be invoiced by Keefe a onetime hardware cost to be paid by Humboldt County Juvenile Hall of \$14,500 up front for hardware and infrastructure for the Juvenile tablet program.

Humboldt County Adult Jail will be billed for a onetime cost of \$2,500 for the upgraded Endovo Educational Server of \$2,500.00. Keefe will invoice the County for the \$2,500 upfront cost of this server upgrade.

Commissary Ordering: Tablets support the ability for inmates to place commissary orders electronically, interfacing directly with the facility's commissary, without involving correctional staff and time. This solution is compatible with any commissary system that provides a modern Web-based ordering system.

Secure Messaging: To reduce mailroom volume, tablets will provide a messaging solution that allows inmates and approved contacts to exchange electronic typed messages. This solution will trigger alarms based on watchwords, allow text searches across messages, and permit facility staff to conduct speedy reviews of messages.

Fees charged by tablet provider for depositing funds to enable inmates to use Secure Messaging and Tablet services will be charged at the then current rate(s) charged for Keefe's Access Corrections® Secure Deposits program.

Video Visitation: Remote Video Visitation will be provided at \$0.25 per minute, saving the County the capital expense of a standalone Video System.

Entertainment: Inmate tablets will provide entertainment for inmates, including sports scores, music, non-violent games, and other inmate appropriate entertainment.

In addition, tablet provider will make the following optional features available from the inmate tablet solution at no cost to the County:

Digital Grievances: Tablet provider will provide a complete digital inmate grievance and inmate request system, available to users of the inmate tablets. This system will allow the creation, publishing, and management of digital forms and allows submissions to be routed directly to specific individuals. The system will also support follow-up communication with the staff member who receives the submission.

Routing of Requests: Tablets will allow County staff to control the routing of submitted digital requests and grievances to key staff.

Religious Content: By default, tablets will provide content to help meet the needs of inmates of diverse religious beliefs.

Educational Content: Tablet solution will have the capability of displaying current and/or future educational content.

Legal Research/Law Library: Tablet solution will have the capability of displaying Web/HTML-based legal research/law library content in order to reduce inmate escorts to and from the law library. Tablet provider will support a variety of 3rd party law library systems in the event that the 3rd party provider changes in the future. This integration will be provided at no cost to the County or inmate. County will contract directly with the 3rd party law library for their services.

Photo Sharing: To reduce physical photographs being introduced into the facility, tablets will provide a photo sharing solution that allows approved contacts to share digital photos with inmates. Tablet provider will manually review each photo for nudity and offensive behavior before it may be seen by the inmate. Inmates may not take photos or share photos with their approved contacts.

Content Blocking: Tablets will allow the County to block specific content offerings either temporarily or permanently if the County anticipates that the content will provide problems for their facility.

Inmate Self Improvement: Tablets provide content options for inmate self-improvement, including personal finance, employment, national news, and learning options.

No Penalties: There is no additional cost to the County for any features or hardware described herein.

NETWORK AND HARDWARE

Tablet Ownership & Maintenance: The tablets will be owned by tablet provider, and tablet provider will be responsible for all installation, maintenance and ongoing support.

Prime Provider: Tablet provider will be the prime developer and provider of the inmate tablet solution and service.

No Cost to the County: Tablet provider will provide all hardware and services at no cost to the County.

Secure Wireless Network: Tablets will run over a secure wireless network using a unique virtual private network (VPN) per tablet connection to ensure encrypted communications. Cellular network communication (such as Edge, LTE, 3G, 4G) is inherently insecure and will not be utilized.

An Independent Network: Tablets will utilize separate dedicated network for all tablet services.

Auditing/Reporting: Tablets will include a comprehensive inmate tablet reporting system. Inmate tablet usage (by inmate and by tablet) will be fully auditable, and data will be available to facility staff.

Full Access Control Software: Tablet provider will limit access to tablets to inmates currently in the same housing unit as the tablet itself.

Web Based Software: Tablet provider will provide Web based access to tablet command and control capabilities, including, but not limited to, the ability to suspend an inmate or friend or family privileges for a set amount of time or until a specified date and time. Solution will be compatible with Chrome, Safari, Firefox and Internet Explorer Web browsers, and will be accessible from both Microsoft Windows and Apple OS X platforms.

Access Control by Group and Individual: Tablet provider will provide the ability for staff to block tablet access for specific inmates or groups for a predefined period of time in the event of a disciplinary event.

Security Layers: Tablet provider will ensure that all networked traffic utilizes a proxy server and firewall configured to only allow approved addresses and content.

No Escalation of Privileges in the Event of Failure: Tablet provider will ensure that in the event of any component failure, the event will not be capable of granting escalated access privileges.

Newly Booked or Moved Individuals: Tablets will automatically allow access to newly booked inmates, or inmates who are moved between housing units, without staff involvement.

No Inmate-to-Inmate Communication: Tablet provider will ensure that no inmate-to-inmate communication will be allowed through the tablets.

Customer Support: Tablet provider will provide facility service and technical support for all proposed products, available 24/7/365 answered by live operators and will ensure any onsite technicians meet all of the County's security requirements and levels of approval.

PIN-based Login: Tablet provider will provide a PIN based inmate login to allow access to be customized to the inmate who is using the tablet.

Chain of Custody: Tablet provider will retain all submitted grievance and request forms and will not delete them. This submitted information will be searchable, sortable and able to be filtered.

Trust Integration: Tablet solution will integrate with Keefe's existing trust fund solutions, allowing inmates to pay for tablet use directly from their trust fund account.

24/7 Support for Facility Staff: Tablet provider will provide no cost 24/7 support for facility staff, allowing them to ask questions or make requests including reporting of broken equipment, lost passwords, and new staff user setup.

Wireless Charging: Tablet provider will ensure that inmate tablets not interface directly with live electrical current in inmate accessible areas. Tablets will utilize inductive chargers for increased safety and security.

Remote Updates: To minimize technician escorts to inmate living areas, Tablet provider will perform routine tablet software updates remotely.

Complete Data Access: Tablet provider will provide Web based access to tablet information, including the ability to instantly review all tablet usage data including by-inmate and by-tablet data, and summary data for all tablets. Any message exchange between inmates and approved contacts is reviewable and searchable by County staff.

Data Ownership: All collected data, including tablet communication and usage data, is property of the County and will be stored for the life of the contract and extensions.

No Staff Time Requirements: Tablets will not require staff time to operate. will not add responsibilities for any staff members.

Number of Tablets: Tablet provider will provide a minimum of one secure inmate tablet per six (6) inmates. If tablets in any living areas receive more than three (3) hours of sustained use/day, Tablet provider will inform the County and request permission to add additional tablets and charging stations at no cost to the County.

Exhibit F

Release Pay™ Prepaid Debit Card Release

With Government Fund "Gate Money" added to Prepaid Debit Card

1. **Keefe Services.** Keefe shall provide technical support and coordination for the following release Services for processing inmate trust fund balances to County inmates at time of release from the County:

Prepaid Debit Cards ("Cards"): described as, a debit card which may be used for ATM withdraws and/or pin-based and signature purchases after inmate validation. Funds will be held by Axiom Bank N.A. ("Sponsor Bank") from Maitland, FL. Axiom Bank will also be responsible for card issuances to the County. All transactions are processed by a third-party processor - Rapid Financial Solutions, LLC ("Processor").

* Additional Release Services may be made available to the County throughout the term of this Agreement and shall become part of this Agreement with the County's acceptance. No Release Services shall be implemented without County approval. Another Card Brand, Issuing Bank or Program Manager may be substituted during the term of this agreement at Keefe's discretion and shall not constitute an "Additional Release Service." The County will be notified in writing of any such change.

2. **Designated Account.** County hereby agrees that neither the Processor nor Sponsor Bank control the inputs affecting the amount that is to be paid to the recipients. Therefore, as with all financial processes, County agrees to take full responsibility for maintaining a sufficient balance in the County's Designated Bank Account for making payments.
3. **Responsibilities of the County.** Card storage responsibilities of the County are outlined in the attached "Security Requirements for the Storage of Prepaid Cards", "Exhibit F-1" of this Agreement. Keefe reserves the right to modify "Security Requirements for the Storage of Prepaid Cards", "Exhibit F-1" of this Agreement. Keefe shall notify the County of any such change in writing at least 30 days prior to the change being implemented.
4. **Representation and Warranty of County.** The parties hereby state that, based upon their understanding of the applicable laws and regulations, the terms of this Agreement are allowable.
5. **Fees and Charges.** Keefe shall charge a fee for its role in setting up the bank account with the bank issuing the Cards and for coordinating third party processing services. "Coordination Fees" are in accordance with the fee structure located in "Exhibit F-3" for non-Gate Money and Gate Money programs. All fees shall be assessed to the card holder/inmate.
6. **Payment Choice Requirement.** Regulators, Processor and Sponsor Bank require all Keefe Customers providing Gate Money as a Government Benefit to offer in all circumstances and to all persons a choice of payment other than Debit Cards (the "Payment Choice Requirement"), and County shall be responsible for ensuring compliance with the Payment Choice Requirement. Keefe reserves the right to request written certification the Payment Choice Requirement is being followed by County, a copy of which shall be promptly provided upon request. For the avoidance of doubt, any Keefe County's noncompliance with the Payment Choice Requirement, shall constitute a material breach of this Agreement by County, which, among other things, shall give Keefe the right to terminate this Agreement and entitle Keefe, Processor and Sponsor Bank to any lawful indemnification by County pursuant to this Agreement. Keefe or its vendor agrees to provide a Payment Choice Option in the loading interface within its software within 60 days of installation. Customers not providing gate money as a Government Benefit shall have the option to offer all persons a choice of payment other than Debit Cards (the "Payment Choice Requirement"), In the event Processor notifies County that County is required by law, rule, regulatory authority, judicial or governmental order, County shall offer in all circumstances and to all persons a choice of

payment other than Debit Cards (the "Payment Choice Requirement"), and County shall require compliance with the Payment Choice Requirement. County acknowledges Keefe has informed County of the CFPB guidance found in 12 CFR Part 1005, Bulletin 2022-02, as attached.

7. County shall indicate below the type of Release Pay™ program that will be provided under this Agreement.

_____ Release Pay™ without "Gate Money" funds (The inmate will receive the funds remaining on the inmate's trust account for commissary services at the time of the inmate's release from the County's facility.)

_____ Release Pay™ with "Gate Money" funds program ("Gate Money" means the inmate being released will receive funds from the County or another Government funded source, in addition to the funds remaining on the inmate's trust account for commissary services at the time of the inmate's release from the County's facility.) The facility must give a payment choice to the released inmate. The payment choice must be recorded by the facility and made available upon request.

The fees for the non-Gate Money and with Gate Money programs are attached as Exhibit F-3.

8. **Taxes.** Each party shall be responsible for calculating, collecting and remitting their own Federal, state and/or local taxes, associated with the release services.

***Taxes should not be levied on the issuance of a Card unless County's laws dictate such.**

9. **Equipment.** Upon expiration or termination of this Agreement, County agrees that all equipment and materials remain the property of Keefe and upon expiration or termination of this Agreement Keefe agrees to promptly remove all equipment and materials from the above-mentioned County. County shall be responsible for any unusual wear and tear, lost or stolen equipment as well as any lost, stolen or improperly funded Cards during the term of this Agreement.

10. **Confidentiality.** Keefe agrees to keep all information about inmates confidential and to make no disclosure thereof to any third party, except as may otherwise be required by law or necessary to provide the Service specified in this Agreement. Keefe agrees to give County prompt notice of any such disclosure.

11. **Exclusivity.** County acknowledges that based on this Agreement, Keefe has the sole and exclusive right and authority to provide the services contemplated by this Agreement for all inmate accounts under the County's control and County shall not, throughout the term of the Agreement, engage the services of any other company to provide such services.

12. **Compliance.** Keefe and the County shall comply with all laws, orders, rules and regulations applicable to it that are associated with the performance of its duties and obligations under this Agreement.

13. **Fiduciary Responsibility.** County agrees that it shall, to the full extent allowed by law, assume all liability for any County related job functions that lead to discrepancies/deficiencies associated with any funding, Card loss, improper storage, etc. expressly attributed to the loading, inventorying and distribution of the Cards to the County inmates.

14. **Indemnification.** To the extent permitted by law, each party shall indemnify and hold the officers, directors, agents, employees, representatives, subsidiaries, parent company, affiliates, and customers harmless for any losses, claims, damages, awards, penalties, or injuries incurred by any third party, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is

promptly notified of any such claims. The indemnifying party shall have the sole right to defend such claims at its own expense. The other party shall provide, at the indemnifying party's expense, such assistance in investigating and defending such claims as the indemnifying party may reasonably request. This indemnity shall survive the termination of this Agreement

15. Force Majeure. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

16. Termination. In the event that either party believes that the other party has materially breached any obligations under this Agreement, or if either party believes that the other party has exceeded the scope of the Agreement, such party shall so notify the breaching party in writing. The breaching party shall have 30 days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the 30 days, the non-breaching party shall have the right to terminate the Agreement without further notice. Keefe reserves the right to terminate this Agreement if the County, or its representatives' actions, breach the County's responsibilities listed in this Agreement including all Attachments and Exhibits.

17. Assignment. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors of interest, except that County may not assign this Agreement to any person or entity without the written consent of Keefe.

18. Notices. All notices given pursuant to this Agreement shall be in writing and may be hand delivered or shall be deemed received within 10 days after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile or email, confirmation copies must be sent by mail or hand delivery to the addresses listed above.

Exhibit F-1
Security Requirements for the Storage of Prepaid Cards

The security requirements in this document are based on policies and guidelines developed by the Payment Networks and industry best practices. These requirements must be implemented at all locations that store and distribute instant-issue card products.

Card Ordering

Card orders will be shipped to the designated locations by Rapid or its assignees by bonded and approved carrier. Card orders must be signed for upon arrival. All cards must be placed at the time of receipt into inventory in a secured storage area. An employee designated by management should be appointed to ensure the physical and procedural security policies are implemented.

Card Inventory

Physical security of the cards in inventory must be maintained at all times. Cards must be stored in a controlled environment, such as a safe or locked storage device, with access limited to employees who have successfully passed background screening checks.

An inventory log must account for the number of cards received, cards used, cards spoiled (cards that cannot be used due to damage, tampering or expiration) and remaining cards that should balance to the number of cards on hand at any time. An explanation of spoilage should be included on the log. Any inventory discrepancy must be reported to Rapid as soon as detected.

Card Destruction

Rapid may request return of unused cards in inventory for destruction for any of the reasons listed below.

1. Cards are compromised or tampered with;
2. Card stock expired;
3. Cards are damaged or defective;
4. Program is terminated.

Cards to be returned should be securely packaged. A copy of the inventory log should be included in the shipment. A second copy of the inventory log should be transmitted to Rapid electronically.

Alternatively, the location may destroy any defective or damaged card and certify its destruction by maintaining a detailed inventory log, and destroying the cards using a cross cut shredder that creates pieces no larger than 1/4 " by 1/2" in size. A certified report of destruction outlined in Exhibit F-2, attached hereto and incorporated herein by this reference must be submitted to Rapid on a monthly cycle even if no cards were destroyed in that period.

The remainder of this page intentionally left blank.

Exhibit F-2
Certificate of Destruction of Defective or Damaged Cards

I _____ certify that the cards listed below were either damaged or defective. I further certify that the cards below were destroyed using a cross cut shredder that created pieces no larger than ¼ " by ½" in size.

[illegible]

Exhibit F-3

Inmate Release Card Program Fees

Cardholder Fees Associated with the Inmate Release Program

	Charge
Card Activation Fee	No Charge
Support Calls Fee	No Charge
PIN Change Fee	No Charge
Point of Sale (POS) Transactions (PIN & Signature)	No Charge
Cash Back Option with POS purchase	No Charge
POS Declines	No Charge
Card to Bank ACH Transfer	No Charge
Cash Out at any Principal MasterCard Member Institution	No Charge
Monthly Maintenance Fee*	\$3.95
ATM Account Inquiry Fee	\$1.50
Inactivity Fee**	\$3.95
ATM Fees***	\$2.95
ATM Decline for Non-Sufficient Funds Fee	\$2.95
Replacement of lost or stolen card	No Charge
Account Closure Fee/Request for Balance by Check	No Charge

* After 15 days of the card being validated (used for a transaction) the card starts incurring a monthly maintenance fee. Once the card has been validated the inactivity fees no longer apply. Both fees will never be charged together.

** If after 100 days the card has not been validated (used for a transaction) the card will be charged an inactivity fee of \$3.95 per month. The fee is charged until the card has been validated (used for a transaction).

***Fees may also be imposed by the local ATM provider or financial institution in addition to card fees. For a listing of surcharge-free ATM's, visit <http://www.moneypass.com/>.

*****Cardholder fees are subject to change. Thirty (30) day prior written notice of a change in fees will be given. The changes will be posted on the Card website at www.release.com. You will be deemed to have proper notice thirty days (30) after the amendments are posted.

Customer Service / Servicio Al Customers:

Toll Free from U.S.A. – (877) 287-2448

www.releasepay.com

(The CFPB Compliance Bulletin is provided for information only)

**Consumer Financial Protection Bureau ("CFPB") Compliance Bulletin
Regarding Payment Choice**

BILLING CODE: 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

**Bulletin 2022-02: Compliance Bulletin on the Electronic Fund Transfer Act's Compulsory
Use Prohibition and Government Benefit Accounts**

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Compliance bulletin.

SUMMARY: The Electronic Fund Transfer Act (EFTA) provides, among other things, that no person may require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of receipt of a government benefit. The Bureau of Consumer Financial Protection (Bureau) is issuing this Compliance Bulletin to reiterate that this prohibition in EFTA applies to government benefit accounts.

DATES: This bulletin is applicable on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Elliott C. Ponte, Counsel, or Kristine M. Andreassen, Senior Counsel, Office of Regulations, at 202-435-7700. If you require this document in an alternative electronic format, please [contact *CFPB Accessibility@cfpb.gov*](mailto:contact_CFPB_Accessibility@cfpb.gov).

SUPPLEMENTARY INFORMATION:

I. Discussion

Section 913 of EFTA provides, among other things, that no person may require a consumer to establish an account for receipt of electronic fund transfers (EFTs) with a particular

financial institution as a condition of employment or receipt of a government benefit.¹ This provision, often referred to as the compulsory use prohibition, is implemented in § 1005.10(e)(2) of Regulation E. The Bureau is issuing this Compliance Bulletin to reiterate that the compulsory use prohibition in EFTA applies to government benefit accounts.

A. Background

Congress enacted EFTA in 1978 with the purpose of “provid[ing] a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems.”² EFTA’s primary objective is “the provision of individual consumer rights.”³ Congress also empowered the Board of Governors of the Federal Reserve System (Board) to promulgate regulations implementing EFTA. With the adoption of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), authority to implement most of EFTA transferred to the Bureau.⁴

The regulations first promulgated by the Board to implement EFTA now reside in subpart A of Regulation E.⁵ These rules provide a broad suite of protections to consumers who make EFTs, and for accounts from which consumers can make EFTs. An EFT is any transfer of funds initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a

¹ 15 U.S.C. 1693k.

² Public Law 95-630, 92 Stat. 3728 (1978).

³ 15 U.S.C. 1693b.

⁴ Public Law 111-203, tit. X, section 1084, 124 Stat. 1376, 2081 (2010) (codified at 15 U.S.C. 1693a *et seq.*). See also Dodd-Frank Act section 1061(b), 124 Stat. 2036 (codified at 12 U.S.C. 5581(b)).

⁵ These provisions were originally adopted as 12 CFR part 205 but, upon transfer of authority in the Dodd-Frank Act to implement Regulation E to the Bureau, were renumbered as 12 CFR part 1005. 76 FR 81020 (Dec. 27, 2011).

consumer's account.⁶ In its initial rulemaking to implement EFTA, the Board developed a broad definition of "account," which closely mirrored the definition of "account" in EFTA.⁷ The definition provides that, subject to certain specific exceptions, an account is a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.⁸

In 1994, the Board amended Regulation E to extend Regulation E's protections to accounts used for the electronic distribution of government benefits (1994 EBT Rule).⁹ After the Board finalized the 1994 EBT Rule, Congress amended EFTA to exempt "needs-tested" State and local electronic benefit transfer (EBT) programs.¹⁰ The Board subsequently adopted a rule exempting EBT programs established or administered by State or local government agencies from Regulation E. However, all accounts used to distribute benefits for federally administered programs (including Federal needs-tested programs) as well as non-needs tested State and local government benefit programs remained covered by Regulation E.¹¹

On October 5, 2016, the Bureau issued a final rule titled "Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z)"

⁶ 12 CFR 1005.3(b)(1).

⁷ 44 FR 18468, 18480 (Mar. 28, 1979).

⁸ 12 CFR 1005.2(b)(1).

⁹ 59 FR 10678 (Mar. 7, 1994).

¹⁰ Public Law 104-193, 110 Stat. 2105 (1996).

¹¹ 62 FR 43467 (Aug. 14, 1997).

(2016 Final Rule).¹² The 2016 Final Rule, as subsequently amended,¹³ is referred to herein as the Prepaid Accounts Rule. The Prepaid Accounts Rule, among other things, extended Regulation E coverage to prepaid accounts and adopted provisions specific to such accounts. The definition of “prepaid account” in the Prepaid Accounts Rule includes government benefit accounts (as defined in § 1005.15(a)(2)), which were already covered by Regulation E since the mid-1990s. The Prepaid Accounts Rule generally maintained the existing provisions specific to government benefit accounts, while adding certain new requirements such as pre-acquisition disclosures. The Prepaid Accounts Rule did not change the compulsory use prohibition in § 1005.10(e) of Regulation E, but did add commentary to clarify the compulsory use prohibition’s application to government benefits (comment 10(e)(2)-2), which is in line with preexisting commentary regarding payroll card accounts (comment 10(e)(2)-1).

B. Compulsory Use Prohibition

As mentioned above, the compulsory use prohibition of EFTA, as implemented by Regulation E, provides that no person may require a consumer to establish an account for receipt of EFT with a particular financial institution as a condition of receipt of a government benefit.¹⁴ Person, for the purposes of Regulation E and the compulsory use prohibition, means a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association.¹⁵ The compulsory use prohibition applies to all

¹² 81 FR 83934 (Nov. 22, 2016).

¹³ See 82 FR 18975 (Apr. 25, 2017) and 83 FR 6364 (Feb. 13, 2018). These amendments, among other things, extended the effective date of the Prepaid Accounts Rule to April 1, 2019.

¹⁴ 12 CFR 1005.10(e).

¹⁵ 12 CFR 1005.2(j).

persons, not just financial institutions as defined in Regulation E.¹⁶ The compulsory use prohibition applies to “government benefit accounts,” which is defined as an account established by a government agency for distributing government benefits to a consumer electronically. However, for purposes of Regulation E, including the compulsory use prohibition, a government benefit account does not include an account for distributing needs-tested benefits in a program established under State or local law or administered by a State or local agency.¹⁷

The term “needs-tested” is not defined in EFTA or Regulation E. In the preamble to its 2016 Final Rule, the Bureau identified examples of needs-tested government benefit programs that *are not* “government benefit accounts” subject to the compulsory use prohibition, such as those used to distribute funds related to Temporary Assistance for Needy Families (TANF), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and the Supplemental Nutrition Assistance Program (SNAP).¹⁸ Accounts established under programs administered by State or local agencies for benefits that are not needs-tested *are* “government benefit accounts” subject to the compulsory use prohibition. Examples of government benefit accounts administered by State or local agencies that are subject to the compulsory use prohibition because they are not needs-tested include accounts used to distribute unemployment insurance, child support, certain prison and jail “gate money” benefits, and pension plan payments.¹⁹

¹⁶ 12 CFR 1005.3(a).

¹⁷ 12 CFR 1005.15(a)(2).

¹⁸ See 81 FR 83934, 83942 (Nov. 22, 2016). While these accounts do not constitute “government benefit accounts” as defined in § 1005.15(a)(2), the Bureau notes that they may still be “prepaid accounts” under one of the other prongs of that definition in § 1005.2(b)(3). To the extent that they are prepaid accounts, the requirements of the Prepaid Accounts Rule apply.

¹⁹ See 81 FR 83934, 83995 (Nov. 22, 2016); *In re JPay, LLC*, File No. 2021-CFPB-0006 (Oct. 19, 2021), www.consumerfinance.gov/enforcement/actions/jpay-llc/.

In addition, all accounts used to distribute funds under federally administered benefits programs (even if those benefits are needs-tested) are “government benefit accounts” subject to the compulsory use prohibition; for example, accounts used to distribute Social Security, Social Security Disability Insurance, and Supplemental Security Income (SSI) payments; or Federal tax credits like the Earned Income Tax Credit (EITC) or the Child Tax Credit (CTC) are subject to the compulsory use prohibition.²⁰

The compulsory use prohibition ensures that consumers receiving the government benefits described above have a choice with respect to how they receive their funds. Government agencies, financial institutions, and other persons have several options available to them to ensure consumers are provided a choice.²¹ For example, a government agency that requires consumers to receive benefits through direct deposit will not violate the compulsory use prohibition if it allows consumers to choose the financial institution they want to use in receiving the direct deposit.²² Alternatively, a government agency may give a consumer the choice of having their benefits deposited at a particular institution (designated by the government agency) so long as the consumer is able to receive their benefits by another means.²³

As the Bureau explained in the 2016 Final Rule, the Bureau believes that consumers are not provided a choice when a consumer is required to receive the *first* payment of government

²⁰ See *id.* at 83995, 84320.

²¹ In 2013, the Bureau issued a Compliance Bulletin on Payroll Card Accounts (Payroll Card Bulletin) to, among other things, reiterate that the compulsory use provision of EFTA and Regulation E prohibits employers, financial institutions, and other persons from mandating that employees receive wages only on a payroll card at a particular institution. As explained in the Payroll Card Bulletin, payroll card accounts are accounts that are established directly or indirectly through an employer, and to which transfers of the consumer’s salary, wages, or other employee compensation are made on a recurring basis. See *CFPB Bulletin 2013-10* (Sept. 12, 2013), www.consumerfinance.gov/compliance/supervisory-guidance/bulletin-payroll-card-accounts/.

²² 12 CFR 1005.10(e)(2) and comment 10(e)(2)-2.

²³ See *id.*

benefits on a prepaid card (or otherwise at a particular institution), even if the consumer can later re-direct the payment to an account of their choice.²⁴ In such a scenario, the consumer does not have a choice with respect to how to receive the first payment of the government benefit; rather, with respect to that first payment, the consumer was required to establish an account with the financial institution that issued the prepaid card as a condition of receiving the funds.²⁵

In addition to having a choice with respect to how consumers receive their government benefits, Regulation E requires that a statement of the consumer's payment options be included in disclosures provided before a consumer acquires a government benefit account. Specifically, that statement must disclose that (1) the consumer has several options to receive benefit payments, followed by a list of the options available to the consumer, and a statement directing the consumer to tell the agency which option the consumer chooses; or (2) the consumer does not have to accept the government benefit account and directing the consumer to ask about other ways to receive government benefit payments.²⁶ As discussed more below, government benefit accounts are entitled to additional protections and disclosures under Regulation E.

C. Additional Regulation E Protections for Government Benefit Accounts

As mentioned above, government benefit accounts are entitled to the protections of EFTA generally, and Regulation E's provisions applicable to prepaid accounts specifically. The protections in Regulation E for consumers who receive government benefits include the following:

²⁴ 81 FR 83934, 83985 (Nov. 22, 2016).

²⁵ *Id.*

²⁶ 12 CFR 1005.15(c)(2)(i).

- **Disclosures.** Under Regulation E, consumers are entitled to three types of disclosures for government benefit accounts: pre-acquisition disclosures, disclosures on the access device or entry point, and initial disclosures.

Pre-acquisition disclosures for a government benefit account must set forth key information about the account that includes, as mentioned above, a statement regarding the consumer's payment options.²⁷ A government agency must provide the consumer with pre-acquisition disclosures before the consumer acquires a government benefit account.²⁸

Disclosures on the access device or entry point for a government benefit account must contain the name of the financial institution that directly holds the account or issues the access device as well as a website and phone number that the consumer can use to contact that financial institution about the government benefit account.²⁹ These disclosures must be included on the access device or, if there is no physical access device, on a website, mobile application, or other entry point a consumer must visit to access the government benefit account electronically.³⁰

Initial disclosures must set forth comprehensive fee information that may be imposed in connection with the account as well as the information required to be included in the initial disclosures for other accounts subject to Regulation E, which include, among other things, disclosures regarding a consumer's liability for unauthorized EFTs, an error

²⁷ 12 CFR 1005.15(c)(2).

²⁸ 12 CFR 1005.15(c)(1).

²⁹ 12 CFR 1005.15(f), 1005.18(f).

³⁰ 12 CFR 1005.15(f), 1005.18(f)(3).

resolution notice, contact information for the financial institution providing the account, the types of transfers a consumer may make and any limitations on the frequency and dollar amount of transfers, and the fees associated with making.³¹ Initial disclosures must be made at account opening or before the first EFT occurs.³²

- **Change-in-Terms Notices.** Change-in-terms notices are required when a term or condition required to be disclosed in the initial disclosures changes or the change results in an increased fee, increased liability for the consumer, fewer types of available EFTs, or stricter limitations on the frequency or dollar amount of EFTs.³³

- **Access to Account History.** Government agencies must either provide a periodic statement as required by Regulation E generally, or must make available to the consumer (1) the consumer's account balance, by telephone; (2) an electronic history, such as through an website, of the consumer's account transactions covering at least 12 months preceding the date the consumer electronically accesses the account; and (3) written account transaction histories provided upon request must cover at least the 24 months preceding the date on which the government agency receives the consumer's request for the account transaction history.³⁴

- **Limited Liability for Unauthorized Transfers and Error Resolution Rights.** With limited modifications regarding the period within which an unauthorized transfer must be

³¹ 12 CFR 1005.15(e)(1) and (f), 1005.18(h)(2)(ii)(A) and (iv). *See generally* 12 CFR 1005.7(b).

³² 12 CFR 1005.7(a).

³³ 12 CFR 1005.8(a)(1); 1005.15(f); 1005.18(f), (h)(2)(ii)(A), (iii), and (iv).

³⁴ 12 CFR 1005.9(b); 1005.15(d)(1); and 1005.18(h)(3)(i).

reported, Regulation E's limited liability protections and error resolution rights fully apply to government benefit accounts.

II. Conclusion

The Bureau is issuing this Compliance Bulletin to reiterate that the compulsory use prohibition in EFTA applies to government benefit accounts, as defined in Regulation E. The Bureau notes that it is authorized, subject to certain exceptions, to enforce EFTA and Regulation E against any person subject to EFTA and Regulation E, including financial institutions.³⁵ In addition, subject to certain exceptions, the Bureau has enforcement authority over covered persons offering or providing certain consumer financial products or services—including government benefit accounts—under the Consumer Financial Protection Act of 2010.³⁶

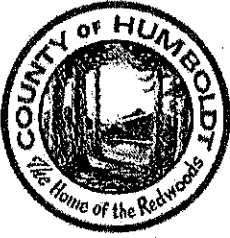
/s/ Rohit Chopra

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

³⁵ 15 U.S.C. 1693o(a)(5).

³⁶ Public Law 111-203, tit. X, 124 Stat. 1955 (2010) (12 U.S.C. 5561 through 5567).



AGENDA ITEM NO.

C30

COUNTY OF HUMBOLDT

For the meeting of: August 21, 2018

Date: August 8, 2018
To: Board of Supervisors
From: William F. Honsal, Sheriff
Subject: Agreement with Keefe Commissary Network, L.L.C, and the County of Humboldt for the period of August 1, 2018 through July 31, 2023.

RECOMMENDATION(S):

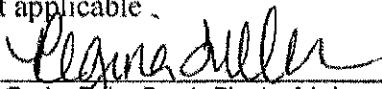
That the Board of Supervisors

1. Approve the Commissary Services Agreement with Keefe Commissary Network, L.L.C, (Attachment 1) for the period of August 1, 2018 through July 31, 2023 to provide food and other related commissary items and services to the Humboldt County Correctional Facility (HCCF) inmates.
2. Authorize the Chairperson to execute three (3) originals of the agreement and any modifications, amendments or extensions for the duration of the agreement.

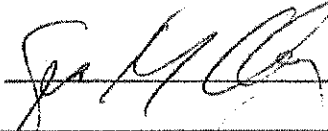
SOURCE OF FUNDING:

Not applicable

Prepared by


Regina Fuller, Deputy Director Admin

CAO Approval

REVIEW:

Auditor

County Counsel

NAM

Human Resources

KLB

Other

TYPE OF ITEM:

☒ Consent
☐ Departmental
☐ Public Hearing
☐ Other

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

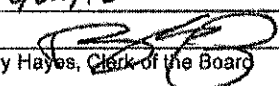
Upon motion of Supervisor *Bass*
Seconded by Supervisor *Wilson*

Ayes *Bass, Fennell, Sundberg, Bohn, Wilson*
Nays
Abstain
Absent
And carried by those members present, the Board hereby approves the recommended action contained in this report.

Dated:

8/21/18

By:


Kathy Hayes, Clerk of the Board

KEEFE COMMISSARY NETWORK, LLC
COMMISSARY SERVICES AGREEMENT

This Agreement, entered into this 1st day of August, 2018, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Keefe Commissary Network, L.L.C, an affiliate of The Keefe Group, hereinafter referred to as "KEEFE," and collectively, the "Parties."

KEEFE is in the business of supplying food and other related commissary items and services to inmate commissary departments of correctional facilities throughout the United States, including the Humboldt County Correctional Facility ("HCCF"); and,

The Parties wish to enter into a Commissary Services Agreement to facilitate the ordering of commissary items by inmates and the operation of and payment for commissary (collectively, "Commissary Services").

Therefore, in consideration of the mutual promises and conditions herein contained, the Parties agree as follows:

1. **OPERATION OF COMMISSARY.**

a. **By COUNTY.** COUNTY agrees that during the term of this Agreement, it will, at its own expense: (a) provide COUNTY personnel to operate the KEEFE proprietary software; (b) manage and reconcile the funds in the Inmate Trust Accounts; and (c) deliver the completed commissary orders to the individual inmates.

b. **By KEEFE.** KEEFE agrees that it will download all inmate orders for commissary items in real-time or near real-time by utilizing Web Services. KEEFE will bag, box, and ship such commissary items to the COUNTY for distribution to the inmates, it being understood and agreed that said orders shall be delivered to the COUNTY for delivery to the Inmates on Thursdays. KEEFE shall invoice COUNTY for all such purchases in accordance with Section 7.0.

c. **New Construction.** Construction of a new building to add forty-two plus (42+) beds will commence in approximately one year, with an estimated completion date of 2020. KEEFE shall provide Commissary Services and tablets for the new building, consistent with the terms herein.

d. **Commissary Operations.** Commissary Operations provided by KEEFE shall include but not be limited to the following:

1) Correctional commissary management application to enforce all restrictions, provide all reports, track all inventory and generally support the required commissary operations.

2) Access to the inmate commissary for inmates on a schedule that ensures each inmate has an opportunity to make real-time or near real-time purchases.

3) An efficient system for providing refunds for damaged or otherwise unacceptable items and items that could not be delivered because the inmate was released or moved.

4) Procedures for the effective resolution of inmate grievances regarding commissary-related issues. This procedure must be compatible with, and use the same forms as specified in the Sheriff's Office policy on inmate grievances.

5) Automated, digitized commissary order forms listing all approved menu items and current prices. Order form shall also include spaces for inmate name, inmate ID number, housing unit, cell number and order date.

6) Orders filled at a minimum rate of 98% completeness and accuracy.

7) All orders will be bagged offsite and packed in transparent, perforated plastic bags for delivery.

8) Except pastries, bread or milk, all merchandise shall have at least 30 days of remaining shelf life when it is delivered to an inmate.

9) All food items for sale must have nutritional information on packages or labels.

10) Each Order containing two (2) printed copies of an invoice listing the merchandise in the package as well as any alterations to the inmate's order that have been made.

11) Procedures for issuing credits, returns, or undeliverable merchandise.

12) Indigent kits to eligible inmates – KEEFE shall provide three thousand nine hundred (3,900) free Indigent Kits per year to the COUNTY. KEEFE shall charge the COUNTY \$2.60 per kit for additional indigent kits beyond three thousand nine hundred (3,900). Each indigent kit shall contain:

- One clear tube of toothpaste (1.7 oz. minimum)
- One safety/security toothbrush
- One golf pencil
- One spork
- One bar of clear soap (4 oz. minimum)
- One shampoo (3 oz. minimum)
- One pocket size comb
- 4 sheets of lined paper (8 ½" x 11")
- 2 pre-stamped envelopes

13) Adequate supplies for operation of all commissary-related equipment, or a process for delivering the supplies real-time. Additional supplies shall be available upon request from KEEFE's local warehouse.

2. **MENU and PRICING.** Commissary item selection and pricing will be agreed upon by COUNTY and KEEFE. Current menu is attached as Exhibit D. Commissary item menu selection and price adjustments shall be reviewed as needed, but no less than annually, by the COUNTY and KEEFE. All changes must be approved by COUNTY. KEEFE shall be responsible

for paying all applicable taxes. Returned or undelivered merchandise shall not count towards total commissionable sales, nor shall any items such as stamps that may not be marked up for re-sale.

Substitutions or removal of items from the approved commissary menu will be subject to the written approval of the COUNTY. All prices proposed shall be held for 1 year and reviewed no less than annually with the COUNTY. KEEFE can provide documentation that the product has been re-sized, re-formulated, discontinued or altered by the manufacturer, in which case price changes and/or alternate products may be considered. No brand, price, or product may be changed at any time without the prior written approval of the COUNTY.

3. **FRIENDS AND FAMILY INMATE ORDERING SITE.**

a. **Terms** - The following terms as used in this Section 3 shall have the definitions set forth below:

1) *Friends and Family Orders* – Orders placed by friends and family of Inmates on a customized website for delivery to inmates.

2) *Friends and Family Handling Charges* – Cost to KEEFE to handle and deliver Friends and Family Orders.

3) *Friends and Family Adjusted Gross Sales* – Amount calculated by subtracting Friends and Family Handling Charges and any non-commissionable items as outlined in this document from gross sales of any Friends and Family Orders.

4) *Securepak Shipping Fees* are \$5.95

b. **Website** - KEEFE will maintain a customized website specifically designed for Humboldt County, allowing friends and family of Inmates to order products to be delivered to Inmates by KEEFE and at KEEFE's sole expense. KEEFE and COUNTY will work together in good faith to agree on pricing and selection of these items no less than annually. This additional service will be provided by KEEFE at no cost to the COUNTY and will be an exclusive agreement whereby KEEFE will be the sole provider of this program.

c. **Service Fee** - No later than fifteen calendar (15) days following each month, the COUNTY will be paid a Service Fee on all Friends and Family Orders which COUNTY has delivered to Inmates during the immediately preceding month. Said Service Fee shall be equal to 40% of Family and Friends Adjusted Gross Sales for the applicable period.

4. **INMATE BANKING/ACCOUNTING.** KEEFE shall provide all software for a computerized inmate banking application to keep accurate and complete records of all commissary activity and balances of individual inmate accounts. This system must be approved by the COUNTY, be completely accessible to authorized COUNTY staff, and meet the following requirements:

a. This system shall keep track of all inmate accounts individually and cumulatively in a ledger that is entirely separate from the facility ledger and bookkeeping

records which are tracked in the COUNTY Jail Management System. The proposed system must, at KEEFE's expense, interface and integrate with the existing Jail Management System to import inmate information; and KEEFE shall develop any interfaces at KEEFE's expense.

b. This application shall be highly secure, shall, at no cost to COUNTY, interface with all other applications that the COUNTY uses or will use at any time in the future and access by multiple users with various permissions and access levels. System security shall satisfy all applicable laws and regulations.

c. All inmate information and all records gathered or stored on the proposed banking application or in the inmate banking system is the property of the COUNTY and may not be accessed, used, released or duplicated except as approved in writing by the COUNTY in advance of any such release, access, duplication, etc.

d. This system shall conform to general accounting principles: each transaction shall process a debit and credit to the appropriate general ledger accounts. All cancelled/voided transactions shall process as "real time" transactions on the date and time of the actual void or cancel, and appear as opposite reversing entries in the general ledger accounting system.

e. This system must be equipped with tiered access levels for security purposes and access to all reports must be available at all levels. Print, sort, and search or find options shall be available in all reports.

f. This system must work efficiently twenty-four (24) hours a day, seven (7) days a week. Off-site technical support must be available during all hours of operation. The system must have the option to release or close an account as cash, check or debit card. The system must conform to the jail check-printing format.

g. This system must be able to process commissary credits upon notification if inmates are released on the day a commissary order has been charged to the account and not yet delivered (including indigent/welfare bags).

5. **TECHNOLOGY.** KEEFE shall implement, at no cost to the County, Web Services, a cloud-based server, a separate network access, Wi-Fi routers, all wireless and wired infrastructure requirements, and any other required interfaces and integrations, to enhance and streamline commissary operations. KEEFE shall upgrade systems, services, and products as appropriate and with COUNTY approval, with improvements in Technology. KEEFE shall also implement the following:

- a. **Tablets.** COUNTY will replace In-Pod Kiosks with Tablets provided by KEEFE's subcontractor Telmate. KEEFE will be the main point of contact for this project and shall work with the COUNTY to determine the appropriate number of Tablets, configuration and support, as this project

develops. Inmate demand for the Tablets will dictate the number of additional Tablets added through the life of the contract. Tablets shall be provided by KEEFE at no cost to the COUNTY. The Tablets shall have the capability to support commissary ordering, grievance filing and tracking, medical/dental appointment scheduling, inmate request filing, electronic forms specified by the COUNTY, and real-time account balance checks and transaction history reports for the banking system.

- b. 90-Day Pilot for Three (3) Vending Machines. After the conclusion of the Pilot, COUNTY shall have the option to keep the three (3) vending machines or add additional vending machines to the facility depending on the results of the pilot, at no cost to the County for the life of the Agreement. COUNTY agrees to purchase all items to be sold in the vending machines from KEEFE consistent with a menu of items and pricing that will be agreed to prior to the implementation of Inmate Vending. COUNTY, at its discretion, will mark up the Vending items to their needs. KEEFE will help guide, implement and suggest a course of action for COUNTY that is the most advantageous to COUNTY. Once vending machines are installed, COUNTY staff will purchase, fill, and manage the vending machines. KEEFE shall provide support and warranty the vending machines for the life of the contract at no cost to COUNTY.

6. HARDWARE/SOFTWARE.

- a. During the term of this Agreement, KEEFE shall supply COUNTY with the KEEFE Software, and the Tablets through Keefe Subcontractor Telmate. COUNTY agrees to return all Tablets and KEEFE Software to KEEFE in workable order upon contract termination.

- b. KEEFE hereby grants to COUNTY a non-exclusive, royalty-free license to use the KEEFE Software during the term of this Agreement. All software supplied by KEEFE is proprietary and shall at all times remain the property of KEEFE with title and all rights vested in and retained by KEEFE. COUNTY hereby agrees that it will NOT disclose, reproduce, transfer, alter, reverse-engineer, decompile or use the KEEFE Software and/or documentation for any purpose, other than those specifically allowed by the terms of this Agreement. All hardware installed by KEEFE shall remain the property of KEEFE unless otherwise expressly agreed to by the Parties in writing.

- c. KEEFE agrees that it shall be responsible for any and all necessary wiring, network switches, hardware, and interfaces necessary for installation of the the Inmate ordering kiosks, and other applicable equipment.

- d. KEEFE shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by KEEFE in the performance of services under this Agreement, other than those owned or provided by the COUNTY shall be free

from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to the COUNTY under this Agreement.

7. **PAYMENT.** KEEFE will send an itemized invoice to the COUNTY on a monthly basis for Orders delivered in the prior month (each invoice being referred to hereafter as an "Invoice"). The Invoice shall itemize all Orders delivered in the prior month and shall be in a format approved by, and shall include backup documentation as specified by, [Short title of Department Head] and the Humboldt County Auditor-Controller. Payment of invoice shall be deducted from the Commission check paid by KEEFE to the COUNTY.

KEEFE shall submit a final undisputed invoice for payment no more than thirty (30) days following the expiration or termination date of this Agreement. Payment for work performed will be made within thirty (30) days after the receipt of approved invoices.

8. **COMMISSION.** COUNTY will be paid a commission for the services to be provided under this Agreement equal to forty percent (40%) of Adjusted Gross Sales of commissary items. "Adjusted Gross Sales" is defined as gross commissary sales minus the sales of non-commissioned commissary items as listed in **Exhibit C** of this Agreement. The Commission check paid to the COUNTY each month shall reflect a net amount of the Adjusted Gross Sales of commissary items less the invoiced amount due to KEEFE by the COUNTY. In the event that the inmate's trust account funds available to purchase commissary products are inhibited in any way by a change in policy or law, the commission paid to COUNTY shall be reduced accordingly by KEEFE after negotiation with COUNTY.

9. **SIGNING BONUS.** As consideration for entering into the Agreement, the parties agreed on a one time signing bonus; therefore, KEEFE shall remit Twenty Thousand Dollars (\$20,000.00) to the COUNTY, within fifteen (15) calendar days after effective Agreement date ("Prepayment"). In the event COUNTY terminates the Agreement prior to the expiration of the Base Term, COUNTY shall refund to KEEFE a prorated amount of the signing bonus; the prorated refund will be calculated by the following formula: $(\text{Prepayment}/\text{Base Term}) \times \text{Remaining Months in Base Term}$. By way of illustration, in the event that this Agreement is cancelled by the COUNTY with twelve (12) months remaining in the Base Term, COUNTY would be responsible for refunding to KEEFE the sum of Six Thousand Six Hundred Sixty-Six Dollars Sixty-Seven Cents (\$6,666.67) $[(\$20,000/36) \times 12]$.

10. **PACKAGE PROGRAM.** This Agreement includes KEEFE's Access Securepak® Inmate Package Program Service, a comprehensive custom package program designed to allow family members and friends to send packages to inmates. KEEFE shall process and deliver orders placed through its Access Securepak website and shall pay the COUNTY a commission for this service. The orders are packaged at Keefe's secured warehouse where boxes are sealed with a pre-printed, tamper-evident tape to ensure the security of the packages. Refer to Section 3 - FRIENDS AND FAMILY INMATE ORDERING SITE, of this Agreement.

11. **TRAINING.** KEEFE shall provide an initial onsite training and follow-up web training at no cost to the COUNTY to COUNTY-designated staff on the Commissary and

Accounting/Billing systems within a mutually agreed-upon specified timeframe. KEEFE shall also provide an annual onsite training on a mutually agreed-upon schedule.

12. **TERM.** This Agreement shall become effective as of the 1st day of August 2018, and shall continue in effect for a period of five (5) years (the "Base Term"), unless sooner terminated as provided herein. The Agreement will automatically renew for two successive one-year terms thereafter, unless either party to this Agreement gives notice in writing to the other party no less than ninety (90) days prior to the expiration of any term or extended term that the party so giving notice does not wish to extend this Agreement.

13. **TERMINATION.**

A. **Breach of Contract.** If either party shall refuse, fail or be unable to perform or observe any of the terms or conditions of this Agreement for any reason other than Force Majeure reasons defined herein, the party claiming such failure shall give the other party a written notice of such breach. If within thirty (30) days from such notice the failure has not been cured, or the failure is such that it may not be cured within thirty (30) days and the party in breach has not commenced the cure within thirty (30) days and continuously pursued the cure, then the injured party may cancel the Agreement. Within thirty (30) days after termination of this Agreement, COUNTY shall, at KEEFE's option, return all Equipment and KEEFE Software, and certify such removal and return in writing to KEEFE. All monies due the Parties at the time of termination shall be paid to the respective party within thirty (30) days after the effective date of the termination of services.

B. **Without Cause.** COUNTY may terminate this Agreement without cause upon thirty (30) days advance written notice to KEEFE. Such notice shall state the effective date of the termination.

C. **Insufficient Funding.** COUNTY's obligations under this Agreement are contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, COUNTY shall, at its sole discretion, determine whether this Agreement shall be terminated. COUNTY shall provide KEEFE seven (7) days advance written notice of its intent to terminate this Agreement due to insufficient funding.

D. **Compensation Upon Termination.** In the event of any termination of this Agreement, KEEFE shall be entitled to compensation for uncompensated services rendered hereunder through and including the effective date of such termination. However, this provision shall not limit or reduce any damages owed to COUNTY due to a breach of this Agreement by CONTRACTOR.

14. **COUNTY'S RESPONSIBILITIES.** COUNTY shall promptly notify KEEFE of any changes in COUNTY's hardware systems, software or operating procedures that interact in any fashion with KEEFE's supplied hardware, software or its operating procedures. COUNTY shall not, during the term of this Agreement nor for one (1) year following its termination or expiration, knowingly solicit to hire, hire, or contract with any employee or former employee of KEEFE, Trinity Services Group, Inc. or any of their parents or subsidiaries, direct or indirect. In

the event that COUNTY breaches its covenant not to hire an employee or former employee, COUNTY agrees to pay KEEFE an amount equal to the annual salary of such employee.

15. **GOVERNING LAW.** Both parties to this Agreement irrevocably: (i) consent and submit exclusively to the jurisdiction of the courts of the State of California, County of Humboldt, (ii) and agree that this Agreement shall be governed by, interpreted and construed in accordance with, the laws of the State of California, without regard to any conflicts of law.

16. **ADVERTISING AND MEDIA RELEASE.** All informational material related to this Agreement shall receive approval from COUNTY prior to being used as advertising or released to the media (television, radio, newspapers and internet). KEEFE shall inform COUNTY of all requests for interviews by media related to this Agreement before such interviews take place; and COUNTY is entitled to have a representative present at such interviews. All notices required by this provision shall be given to the Humboldt County Sheriff or Designee.

17. **PERFORMANCE STANDARDS AND QUALITY ASSURANCE.** KEEFE shall comply with minimum acceptable performance standards and quality assurance levels detailed in the Service Level Agreement (Exhibit A).

18. **ENTIRE AGREEMENT.** This Agreement and its Exhibits constitute the entire Agreement between the Parties with respect to the provision of Commissary (and Payment, where applicable) Services, and there are no other or further written or oral understandings or agreements with respect thereto. No variation or modification of the Agreement and no waiver of any provision shall be valid unless in writing and signed by the duly authorized officers of both KEEFE and COUNTY. This Agreement supersedes all other agreements, negotiations, conversations and representations between the Parties for the provision of Commissary (and Payment, where applicable) Services.

19. **ASSIGNMENT.** Except in the case of a merger, reorganization, change in control, or sale of all or substantially all assets or equity, neither Party shall have the right to assign or otherwise transfer its rights and obligations under this Agreement except with the prior written consent of the other Party, which shall not be unreasonably withheld or delayed.

20. **INDEMNIFICATION.**

a. KEEFE shall hold harmless, defend and indemnify COUNTY and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney fees and other costs of litigation, arising out of, or in connection with, KEEFE's performance of, or failure to comply with, any of the obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of COUNTY.

b. Copyright and Trade Secrets. KEEFE, at its own expense, will defend and indemnify COUNTY against claims that the KEEFE Software furnished under this Agreement infringes a United States trademark or a copyright protected under United

States law, provided COUNTY (i) gives KEEFE prompt written notice of such claims, (ii) grants KEEFE the sole and exclusive authority to defend or settle the claims, and (iii) provides all reasonable assistance to KEEFE in defending or settling the claims. This Section 40 state the entire liability of KEEFE and COUNTY's sole and exclusive remedies for trademark, copyright and any other alleged or actual intellectual property infringement.

21. **INSURANCE REQUIREMENTS.** This Agreement shall not be executed by COUNTY, and KEEFE is not entitled to any rights hereunder, unless certificates of insurance or other sufficient proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

a. **General Insurance Requirements.** Without limiting KEEFE's indemnification obligations provided for herein, KEEFE shall, and shall require that all subcontractors hereunder, take out and maintain, throughout the period of this Agreement and any extended term thereof, the following policies of insurance placed with insurers authorized to do business in California and with a current A.M. Bests rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of KEEFE, its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:

1) Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001), in an amount of Two Million Dollars (\$2,000,000) per occurrence for any one incident, including, but not limited to, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.

2) Automobile/Motor Liability Insurance with a limit of liability of not less than One Million Dollars (\$1,000,000) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles. Said coverage shall be at least as broad as Insurance Service Office Form Code 1 (any auto).

3) Workers' Compensation Insurance, as required by the Labor Code of the State of California, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY, its agents, officers, officials, employees and volunteers.

4) Professional Liability Insurance – Error and Omission Coverage including coverage in an amount no less than Two Million Dollars (\$2,000,000) for each occurrence (Four Million Dollars (\$4,000,000) general aggregate). Said insurance shall be maintained for three (3) years subsequent to the expiration or earlier termination of the Agreement

b. **Special Insurance Requirements.** Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:

1) The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, its agents, officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by or on behalf of KEEFE. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY, its agents, officers, officials, employees and volunteers. Said policy shall also contain a provision stating that such coverage:

- a) Includes contractual liability.
- b) Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to "XCU Hazards."
- c) Is the primary insurance with regard to COUNTY.
- d) Does not contain a pro-rata, excess only and/or escape clause.
- e) Contains a cross liability, severability of interest or separation of insureds clause.

2) The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY in accordance with the notice provisions set forth herein. It is further understood that KEEFE shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.

3) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.

4) For claims related to this Agreement, KEEFE's insurance is the primary coverage to COUNTY, and any insurance or self-insurance programs maintained thereby are excess to KEEFE's insurance and will not be used to contribute therewith.

5) Any failure to comply with the provisions of this Agreement, including breach of warranties, shall not affect coverage provided to COUNTY, its agents, officers, officials, employees and volunteers.

6) KEEFE shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms approved by the Humboldt County Risk Manager or County Counsel. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000) shall be disclosed to and approved by COUNTY. If KEEFE does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and KEEFE agrees to pay the cost thereof. COUNTY is also hereby authorized with the discretion to deduct the cost of said insurance from the monies owed to KEEFE under this Agreement.

7) COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and KEEFE shall be required to purchase additional coverage to meet the above aggregate limits.

c. Insurance Notices. Any and all insurance notices required to be given pursuant to the terms of this Agreement shall be sent to the addresses set forth below in accordance with the notice provisions described herein.

COUNTY: County of Humboldt
Attn: Risk Management
825 5th Street, Room 131
Eureka, California 95501

KEEFE: Keefe Commissary Network, LLC
ATTN: Risk Management
1260 Andes Blvd
St. Louis, MO 63132

22. **REPORTS:** KEEFE agrees to provide COUNTY with any and all reports required by the COUNTY, which may also be required by local, state or federal agencies for compliance with this Agreement. Reports shall be submitted no later than fifteen (15) days after the end of each calendar quarter using the format required by the COUNTY or the State of California as appropriate.

a. Account Management and Reporting Features. The KEEFE Reporting System shall have flexible, easy-to-use account management and reporting features that:

- 1) Allow searching for inmates by inmate ID or last name.
- 2) Allow restriction of commissary purchases based on an inmate's property items. For example, batteries may not be purchased unless an inmate has a radio in his property.
- 3) Allow export of reports to PDF, RTF, or Excel file formats.
- 4) Provide integrated reports within the banking system with no separate login or executable launch required.
- 5) Allow easy reprinting of receipts.
- 6) Allow on-screen viewing of inmate transaction receipts.
- 7) Allow user-definable password security settings including minimum password length and requirements for numbers, symbols, or letters in passwords.
- 8) Allow user-defined indigent tracking based on current balance, days since booking, and deposits over a period, and commissary bills over a period.
- 9) Allow transactions to be easily voided while maintaining a verifiable audit trail.
- 10) Include predefined reports as required by the COUNTY, which may include, but not limited to:

- Trial Balance
- Resident Balances
- Balance Sheet
- Check Postings
- Money Receipts
- Cash Disbursements
- Inmate Debit
- Fund Billing
- Fund Collections
- Fund Credits
- Indigents
- Releases
- Bank Deposits
- Debt Write-Offs
- Reconciliation
- Commissary Receipts
- Commissary Housing Totals
- Commissary Product Sales
- Check Register

11) Allow ad-hoc reports to be run for defined inmate groups based on factors including housing assignment, gender, age, debt, or current balance without programming a reporting tool.

12) Include user-customizable report footer information.

13) Allow reports to be generated based on user and transaction types.

b. Other Management Reports. Other management reports that COUNTY will require and work with KEEFE to develop.

23. **RECORD RETENTION AND INSPECTION:** Maintenance and Preservation of Records. KEEFE agrees to timely prepare accurate and complete financial and performance records relating to the services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this Agreement, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work performed.

24. **INSPECTION OF RECORDS.** Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of KEEFE, and its subcontractors, related to the services provided hereunder, shall be subject to the examination and audit of the California State Auditor and other duly authorized agents of the State of California for a period of three (3) years after final payment under this Agreement. KEEFE hereby agrees to make such records available during normal business hours to inspection, audit and reproduction by any duly authorized agents of the State of California or COUNTY. KEEFE further agrees to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized agents of the State of California or COUNTY. All examinations and audits

conducted under this section shall be strictly confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement.

25. **AUDIT COST.** In the event of an audit exception or exceptions, the party responsible for not meeting the program requirements shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because KEEFE's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

26. **RELATIONSHIP OF PARTIES.** It is understood that this is an Agreement by and between two independent contractors and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other similar association. Both parties further agree that KEEFE shall not be entitled to any benefits to which COUNTY employees are entitled, including, but not limited to, overtime, retirement benefits, leave benefits or workers' compensation

27. **CONSENT.** Where the consent of either party is required, it shall not be unreasonably withheld or delayed.

28. **CONFIDENTIALITY.** "Confidential Information" includes any non-public, confidential or proprietary information furnished by a Party (the "Disclosing Party") to the other Party (the "Receiving Party") including, but not limited to, information relating to the Disclosing Party's business, product designs, product plans, data, software and technology, financial information, marketing plans, business opportunities, pricing information, menus, discounts, inventions and know-how. Confidential Information does not include any information that (i) is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party in violation of this Agreement, (ii) was in the Receiving Party's possession prior to the disclosure of the Confidential Information pursuant to this Agreement without an obligation of confidentiality, (iii) becomes available to the Receiving Party on a non-confidential basis from a third party, provided that the Receiving Party did not know, or have reason to believe, after reasonable investigation, that such source was subject to an obligation not to disclose such information, or (iv) 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, the Receiving Party must promptly notify the Disclosing Party of the demand for such disclosure so that the Disclosing Party may, in its sole discretion, seek a protective order or take such other appropriate steps to resist or narrow the scope of the disclosure sought by such request. If a protective order or other remedy is not obtained, the Receiving Party may make such disclosure without liability under this Agreement, provided that the Receiving Party furnish only that portion of the Confidential Information which is legally required to be disclosed.

29. **EXCLUSIVITY.** COUNTY hereby agrees that KEEFE has the exclusive right to provide the Commissary Services for COUNTY during the term of this Agreement.

30. **NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE.** KEEFE certifies by its signature below that it is not a Nuclear Weapons Contractor, in that KEEFE is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. KEEFE agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if KEEFE becomes a Nuclear Weapons Contractor.

31. **NOTICES.** Any and all notices required to be given pursuant to the terms of this Agreement shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Humboldt County Sheriff's Office
Attn: Business Office
826 4th Street
Eureka, CA 95501

KEEFE: Keefe Commissary Network
10880 Linpage Place
St. Louis, MO
Attention John Puricelli

32. **COMPLIANCE WITH LAWS.** KEEFE agrees to comply with all applicable local, state and federal laws and regulations, including, but not limited to, the Americans with Disabilities Act. KEEFE further agrees to comply with all applicable local, state and federal licensure and certification requirements.

33. **NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES.** No official or employee of COUNTY shall be personally liable for any default or liability under this Agreement.

34. **AMENDMENT.** No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

35. **STANDARD OF PRACTICE.** KEEFE warrants that KEEFE has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. KEEFE's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

36. **TITLE TO INFORMATION AND DOCUMENTS.** It is understood that any and all documents, information, and reports concerning the subject matter of this Agreement prepared and/or submitted by KEEFE shall become the property of COUNTY. However, KEEFE

may retain copies of such documents and information for its records. In the event of termination of this Agreement, for any reason whatsoever, KEEFE shall promptly turn over all information, writings and documents to COUNTY without exception or reservation.

37. **EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION.** The Parties warrant and represent that they shall comply with all federal, state and local laws as required, including but not limited to, Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Act of 1974, as amended. The Parties hereby incorporate the requirements of 41 C.F.R. 60-1.4(a)(7), 60-250.5 and 60-741.5, if applicable.

38. **INTERPRETATION.** This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

39. **INDEPENDENT CONSTRUCTION.** The titles of the sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

40. **LIMITATION OF LIABILITY. EXCEPT FOR CLAIMS OR ACTIONS REQUIRED TO BE INDEMNIFIED PURSUANT TO SECTION 20, INDEMNIFICATION, LIABILITY ARISING BASED ON A BREACH OF SECTION 32 (COMPLIANCE WITH LAWS), OR ANY CLAIM OR ACTION RELATED TO TRADEMARK/COPYRIGHT INFRINGEMENT AS DISCUSSED BELOW, NEITHER PARTY SHALL BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, LIQUIDATED OR EXEMPLARY DAMAGES (INCLUDING LOST PROFIT OR BUSINESS INTERRUPTION EVEN IF NOTIFIED IN ADVANCE OF SUCH POSSIBILITY) ARISING OUT OF OR PERTAINING TO THE SUBJECT MATTER OF THIS AGREEMENT OR OUT OF ANY OF THE PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT.**

41. **FORCE MAJEURE.** Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include, but not be limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

42. **MISCELLANEOUS.** This Agreement may be executed in two or more counterparts, and each such counterpart and any copies thereof shall be deemed an original. The headings in this Agreement are intended solely for convenience and shall not affect the rights of the Parties under the Agreement. In the event any provision(s) of this Agreement is in conflict with any law, statutory provision or otherwise, such term(s) shall be deemed stricken from this Agreement, but any such invalidity or unenforceability shall not invalidate any of the other terms of this Agreement, and the Agreement shall continue in full force and effect. This Agreement will

apply to, be binding on, and inure to the benefit of the successors and permitted assigns of the Parties.

43. **AUTHORITY.** The undersigned representative of each Party warrants that he/she has the full authority to execute this Agreement and bind the Party on whose behalf he/she is executing the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the year and date written below.

County of Humboldt

By: [Signature]
Name: William F. Honsal
Title: Humboldt County Sheriff
Date: 10/11/2018
Address for Notice:
826 4th Street
Eureka, CA 95501

By: [Signature]
Name: Ryan Sundberg
Title: Chair Board of Supervisors
Date: 8/21/18

Keefe Commissary Network, LLC

By: [Signature]
Name: John Puricelli
Title: Executive Vice President
Date: 7/20/18
Address for Notice:
10880 Lin Page Place
St. Louis, MO 63132

With a copy to:
General Counsel, TKS Holdings, Inc.
1260 Andes Boulevard
St. Louis, MO 63132

Insurance and Indemnification Requirements

Approved:

By: [Signature]
Name: Kelly Barnes
Title: Risk Analyst
Date: 08/14/18

Exhibit A

SERVICE LEVEL AGREEMENT

1. Service Performance

- 1.1 Delivery of quality, accurate commissary to inmates of the County's facilities in a timely manner.
- 1.2 High-quality, well-supported software, services and support for the inmate banking accounts and the many transactions, interfaces and processes between these accounts and the various third-party applications and service providers that the County uses or may use at any time in the future.
- 1.3 Real-time reports as requested by County.
- 1.4 Adequate variety, quantity and quality of products including low-salt, sugar-free, heart-healthy, kosher, halal and other merchandise appropriate to the dietary, nutritional, cultural and hygiene needs of all types of inmates that the County's facilities house or may house at any time.
- 1.5 Commissary services and merchandise to inmates for sale at agreed-upon fair and reasonable prices.
- 1.6 Well-maintained equipment and hardware in optimum working condition
- 1.7 New technologies and services that will enhance the operations of the County's facilities.
- 1.8 Accurate commission revenue generation and timely payment of commissions to support the necessary expenditures of the Inmate Welfare Fund.
- 1.9 The Keefe shall comply with Title 15 requirements for Commissary services.
- 1.10 Keefe shall provide a Redundant System and Replacement Plan to include but not limited to equipment, hardware, and software.

2. Liquidated Damages

- 2.1 Late Management Reports and Late Invoices. There will be a Late Fee of \$ 50.00 per day for reports and invoices received late, unless prior approval for late delivery by Keefe has been granted by the County.
- 2.2 System Problems, Non-Delivery, and Other Deficiencies (Software, Hardware, Equipment). If the software or any applicable Keefe hardware or equipment is unavailable during any period of time that it experiences a system problem, non-delivery, or other service-affecting Problem or Deficiency. Failure to provide this service within the agreed-upon timeframes will incur liquidated damages until fully functional. Upon County's or County-authorized Agent's request, Keefe will issue credits for each problem, or deficiency. Keefe shall pay the County the total amount of credit due by check within thirty (30) days from the month Deficiencies occurred under the Agreement.
- 2.3 Keefe shall have a Maintenance/Trouble Ticket process. Notification of all problems and deficiencies shall be handled through the Keefe's designated onsite staff and/or Customer Service Department, which shall be accessible online, via a

toll-free telephone number, and email. Keefe shall provide twenty-four (24) hours a day, seven (7) days a week on-call Customer Service and support staff to support the County and the Keefe's on-site staff in resolving problems and deficiencies.

- 2.4 Staff Reimbursement. Keefe shall reimburse the County at the hourly rate of \$75.00 per hour if County staff performs maintenance.
- 2.5 Severity Levels. The County will assign one of the following "Severity Levels" (Table 1 – Severity Levels and Credits). Keefe must respond to and resolve these in accordance with the following timeframes, following the determination and/or notification of the Problem, Outage, or other Deficiency listed in Table 1 - Severity Levels and Credits (next page).

(Intentionally Left Blank)

Table 1 – Severity Levels and Credits			
Severity Level	Severity Level Description	Duration of Service Outage	Credits
Priority Level One	CRITICAL (Includes but not limited to): Commissary system is down and non-operational, interfaces under Keefe's control are not operational, Keefe servers are non-functional, Keefe software is non-operational, and 50% or more of the Keefe hardware or equipment (if applicable) is non-operational. Response time and completion of repairs and Deficiency resolution to County's satisfaction is made within 12 hours of initial notification of County or County's Agent by Keefe, or from County's or County Agent's initial service request to Keefe.	≤ 12 hours	No Credit
		Between 12 hours and 24 hours	\$50 per hour that component of Commissary Services is deficient
		Between 24 hours and 36 hours	\$100 per hour that component of Commissary Services is deficient
		> 36 hours	\$250 per calendar day that component of Commissary Services is deficient
Priority Level Two	SEVERE (Includes but not limited to): Commissary system is intermittently down, <50% of Keefe hardware or equipment (if applicable) is non-operational, and non-delivery of menu items ordered attributable to the acts or omission of Keefe. Response time, completion of repairs, and Deficiency resolution to County's satisfaction is made within <u>36</u> hours of initial notification of County or County's Agent by Keefe, or from County's or County Agent's initial service request to Keefe.	≤ 36 hours	No Credit
		> 36 hours	\$250 per day that component of Commissary Services is deficient
Priority Level Three	MINOR (Includes but not limited to): Inaccurate reports, accounting reconciliation gaps related to Keefe software malfunction(s), inaccurate commissions calculation, menu item and pricing inconsistencies. Response time, completion of repairs, and Deficiency resolution to County's satisfaction is made within <u>15</u> business days of initial notification of County or County's Agent by Keefe, or from County's or County Agent's initial service request to Keefe.	≤15 business days	No Credit
		>15 business days	\$100.00 per business day that component of Commissary Services is deficient

2.6 Chronic Trouble

Keefe shall ensure that all Chronic Troubles as specified in Table 2 – Chronic Trouble Tickets are addressed and managed in a timely manner based on severity level. A Chronic Trouble (Chronic) defined as any problem or deficiency of a specified root cause, which has experienced 3 separate incidents reported or trouble tickets opened against it by the County or County-authorized Agent, or Keefe, for the same/similar problem and root cause over a rolling 30-day period. A Chronic's rolling 30-day counter is considered "reset" upon a period of 30 days free of the same trouble or problem with the same root cause. The County and Keefe shall mutually agree to either have credits issued (Table 2), or cancel the contract.

Table 2 – Chronic Trouble Credits		
Severity Level	Consecutive Months' Occurrence	Credits
Priority Level One	3	50% of Monthly Revenue Commissions
	6	One Month's Revenue Commissions
	>6	Option to open contract for discussion, up to and including cancellation of contract without penalty
Priority Level Two	3	25% of Monthly Commissions
	6	50% of Monthly Commissions
	12	One Month's Revenue Commissions
	>12	Option to open contract for discussion, up to and including cancellation of contract without penalty
Priority Level Three	3	25% of Monthly Commissions
	6	50% of Monthly Commissions
	≥12	One Month's Revenue Commissions

Exhibit B
Noncommissioned Items

Stamped envelopes

Postage stamps

Indigent Kits

Admission Kits

Phone time or sales

Tablet time or revenue

On-site, special commissary item sales sold by COUNTY

Refunded items

Exhibit C
Payment Services

1. **Services.** KEEFE will provide cash handling services and payment processing services for payments made through online websites and/or mobile sites, walk-in retailers, call centers, or applications operated by KEEFE or such other methods ("**Transactions**") for crediting account balances held by COUNTY on behalf of the recipients of funds (the "**Services**"). KEEFE provides the Services in its capacity as a licensed money services business. KEEFE represents and warrants to COUNTY that KEEFE is duly licensed to provide the Services and will do so in compliance with applicable laws and regulations.
2. **Authorization.** COUNTY authorizes KEEFE to act on its behalf in handling cash and to submit Transactions initiated by individuals through the Services to the credit card networks or otherwise for authorization, processing and settlement to COUNTY for the benefit of designated recipients.
3. **Responsibilities of KEEFE.**
 - a. KEEFE will receive payments from the public, directed to recipients by way of the Services.
 - b. KEEFE will transfer payment files to COUNTY on a daily basis. KEEFE will deliver payments to COUNTY by the second business day following (but not including) the day of the transaction by means of an electronic funds transfer ("**EFT**") to COUNTY's designated bank account; provided, however, KEEFE, in its sole discretion, reserves the right to delay its acceptance of any transaction that KEEFE determines to be suspicious and warrants further investigation. COUNTY acknowledges and agrees that KEEFE may reject, terminate or cancel any proposed transaction should KEEFE determine the transaction is being made for an improper or illegal purpose.
 - c. KEEFE will provide COUNTY with daily payment information by way of the KEEFE COUNTY interface.
 - d. KEEFE will be responsible for responding to and resolving inquiries and complaints from senders of funds arising out of KEEFE's failure to timely transmit any payment to COUNTY.
 - e. KEEFE will provide sufficient promotional material to be posted by COUNTY.
 - f. KEEFE, upon receipt of written notice from COUNTY, shall place limitations on transactions. The limitations will be implemented by KEEFE as soon as is reasonably practicable.
4. **Responsibilities of COUNTY.**
 - a. COUNTY will provide KEEFE with the required bank account information for transmission of an EFT. COUNTY agrees to notify KEEFE, in writing, giving fourteen (14) days' notice, of any changes to the bank account information.
 - b. COUNTY will, upon receipt of written documentation of overpayment, promptly, but in no event more than ten (10) business days, refund any overpayment made by KEEFE, for any reason. This is to include, but not be limited to, duplicate payments, payments refunded to customers by KEEFE and any incorrect payments. At KEEFE's sole option and in lieu of the foregoing, KEEFE may offset any such overpayments from future payment amounts transmitted by KEEFE to COUNTY and notify COUNTY of any such offset.

- c. COUNTY will promptly report receipt of each payment to the designated account or recipient in accordance with the COUNTY's policy.
 - d. COUNTY agrees that it shall, to the full extent allowed by law, assume all liability, responsibility and risk of loss associated with its breach of any of the terms or conditions within this Exhibit D and/or its negligence in the performance of its duties hereunder.
 - e. COUNTY agrees that KEEFE may determine, in its sole discretion, to suspend, terminate or place restrictions on one or more individual's ability to use the Services.
5. **Rates.** The Services shall be provided at no cost to COUNTY. KEEFE shall charge persons initiating a Transaction a service fee in accordance with its rate schedule which the COUNTY acknowledges may be amended by KEEFE in its sole discretion from time to time.
6. **Exclusivity.** KEEFE has the exclusive right to provide the Services for the COUNTY and the exclusive right to collect and receive money handling fees associated with the Services which fees will belong to KEEFE.
7. **Refunds/Chargebacks.**
- a. The Parties acknowledge that once KEEFE accepts a transaction submitted to the applicable payment network or otherwise for processing, KEEFE cannot cancel or change the transaction. Except to the extent required by applicable law, payments processed by KEEFE are non-refundable to the individual by KEEFE. Individuals 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, KEEFE will be responsible for pursuing the chargeback through the card association's dispute resolution processes, if appropriate in KEEFE's sole discretion. Upon written request from KEEFE, COUNTY agrees to provide requested information needed to pursue the chargeback.
 - c. If an individual requests a refund, KEEFE will not be responsible for making those funds available if they have been already settled to a designated account by KEEFE or are beyond KEEFE's control.
 - 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.
8. **Damages Cap; No Other Warranty.** OTHER THAN KEEFE'S OBLIGATION FOR ANY FUNDS RECEIVED FROM INDIVIDUALS, IN NO EVENT SHALL KEEFE'S AGGREGATE LIABILITY IN TOTAL FOR ALL CLAIMS ARISING FROM OR RELATING TO THE SERVICES PROVIDED FOR IN THIS EXHIBIT D, EXCEED THE AMOUNT PAID TO KEEFE PURSUANT TO THE MASTER CONTRACT IN THE PRECEDING TWELVE (12) MONTHS. 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 D, 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.

9. Except as otherwise stated herein in this Exhibit D, the terms of the Agreement apply to the provision of Payment Services.

Exhibit D – Humboldt County Menu



Page 1 of 2

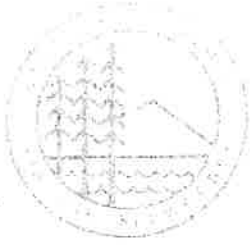
Item	Description	Price	Item	Description	Price	Item	Description	Price
Snacks			Cookies & Pastry			Chips & Crunchy Snacks		
2615	BC Summer Sausage Regular 1.625 oz	\$1.40	2757	NV Granola Bar Sweet/Salty Almond 1.2	\$1.40	2737	Fritos Corn Chips Chili Cheese 2 oz w	\$1.20
2665	Velveeta Spicy Mac & Cheese 3 oz	\$1.85	2758	Granola Bar Crunchy Peanut Butter	\$0.90	3110	Keebler Crackers Club 5.25 oz	\$2.35
2666	Velveeta Rice Cheesey 2 oz	\$1.40	2759	Granola Bar Crunchy Oat & Honey	\$0.90	3115	Cheez-It Crackers 1.5 oz	\$0.85
2667	Velveeta Rice Spicy Cheese 2 oz	\$1.40	3010	MS Soft Cookies Choc Chip 2.75 oz	\$1.25	3219	Austin Crackers Cheese On Cheese	\$0.70
2670	Velveeta Beans & Rice Spicy Cheesy 4 oz	\$2.35	3015	MS Cookies Oatmeal Raisin 2.75 oz	\$1.25	3222	Austin Crackers Toasted PB	\$0.70
2789	Tapatio Hot Sauce 5 oz	\$2.20	3020	Oreo Cookies 2.4 oz	\$1.30	3223	Austin Crackers PB On Cheese	\$0.70
3581	BC Summer Sausage Hot & Spicy 1.625 oz	\$1.50	3031	MS Cookies Orange Pineapple Cremes 6	\$1.75	6079	Whole Shabang Potato Chips 1.5 oz	\$1.10
6026	Maruchan Ramen Chili 3 oz	\$1.17	3035	MS Cookies Choc Chip 6 oz	\$1.75	6100	Moon Lodge Potato Chips 1.5 oz	\$1.10
6046	Maruchan Ramen Chicken 3 oz	\$1.17	3040	MS Cookies Iced Oatmeal 6 oz	\$1.75	6102	Moon Lodge Potato Chips Jalapeno 1.5	\$1.10
6047	Sevilla Refried Beans Spicy 8 oz	\$3.20	3193	Kelloggs Pop Tarts Strawberry 2Pk	\$1.55	6103	CATortilla Chips Scorchin Habanero 1.5	\$1.10
6050	Keefe Rice Inst White 8 oz	\$2.10	3200	Moon Pie Banana Dbl Decker 2.75 oz	\$1.20	6105	Moon Lodge Potato Chips BBQ 1.5 oz	\$1.10
6052	Maruchan Ramen Hot & Spicy Veg 3 oz	\$1.17	3218	Mrs Freshley'S Brownie Fudge 3.25 oz	\$1.60	6116	Cactus Annies Cheese Puffs 2 oz	\$1.20
6059	Maruchan Ramen Shrimp 3 oz	\$1.17	3230	MS Peanut Butter Wafer 2Pk	\$0.80	6125	ML Potato Chips Hot BBQ 1.5 oz	\$1.10
6195	BC Premium Chicken Breast Diced 4.5 oz	\$3.85	3231	MS Snack Cake Oatmeal & Creme 16 oz	\$0.80	6127	Cactus Annies Pork Rinds Hot & Spicy 2	\$1.75
6412	Squeezum Jelly Grape 1 oz	\$0.55	3236	MS Cake Swiss Roll 12 oz	\$0.80	6153	ML Potato Chips Buffalo Blue Cheese 1	\$1.10
6600	CA Tortillas Flour 8 oz 6 ct 8"	\$2.15	3245	MS Donut Sticks	\$0.80	6154	Doritos Chips Nacho Cheese 1.75 oz	\$1.20
Beverages			3270	MS Cupcakes Choc Creme 4 oz	\$1.60	6159	Cheetos Crunchy Flamin Hot 1.75 oz	\$1.20
2011	Keefe Freeze Dried Coffee Decaf 3 oz	\$5.25	6400	Quaker Granola Bar Choc Chip 6.72 oz	\$1.40	6234	Corn Nuts Corn Nuts Ranch 1.4 oz	\$1.45
2070	Keefe Hot Cocoa ss .8 oz	\$0.65	6540	Golden Valley Strawberry Bar Low Fat 1	\$0.70	6606	ML Peanuts Roasted & Salted 1.75 oz	\$1.00
2087	Keefe Creamer ss 10 Pk	\$1.10	Candy			6607	ML Peanuts Hot Hot Hot 1.75 oz	\$1.00
2210	Keefe Drink Mix Fruit Punch ss .5 oz	\$0.55	4001	Mars M&M Peanut 1.74 oz	\$1.40	6680	El Sabroso Cheese Curls Blazin Hot 4 oz	\$2.50
2220	Keefe Drink Mix Lemonade ss .5 oz	\$0.55	4010	Mars Snickers 1.86 oz	\$1.40	Reading Glasses		
2303	Keefe Drink Mix Orange Breakfast 6 oz	\$2.00	4013	Mars Milky Way 1.84 oz	\$1.40	5273	Reading Glasses Polycarb Lense 1.25	\$5.30
2330	Kool Aid Drink Mix Tropical Punch 6 oz	\$2.25	4019	Atkinson Candy Chick-O-Stick .7 oz	\$0.70	5274	Reading Glasses Polycarb Lense 1.50	\$5.30
2340	Gatorade Mix Lemon Lime 1Qt 2.12 oz	\$2.00	4032	3 Musketeers 1.92 oz	\$1.40	5275	Reading Glasses Polycarb Lense 1.75	\$5.30
Kits			4035	Reeses Peanut Butter Cups 1.5 oz	\$1.40	5276	Reading Glasses Polycarb Lense 2.0	\$5.30
9618	Humboldt Kit Indigent Kit	\$2.40	4065	Big Hunk 2 oz	\$2.00	5277	Reading Glasses Polycarb Lense 2.25	\$5.30
9691	Humboldt Pre Addressed Env Kit	\$0.75	4100	Sathers Butterscotch Discs 4.25 oz	\$1.70	5278	Reading Glasses Polycarb Lense 2.5	\$5.30
			4110	Sathers Lemon Drops 4.25 oz	\$1.70	5279	Reading Glasses Polycarb Lense 2.75	\$5.30
			4135	Jolly Rancher Candy Assorted 3.7 oz	\$2.25	5280	Reading Glasses Polycarb Lense 3.0	\$5.30
			4145	Sathers Star Brites 3.75 oz	\$1.70	5281	Reading Glasses Polycarb Lense 3.25	\$5.30
			4146	Atomic Fireball 3 oz	\$1.70	5282	Reading Glasses Polycarb Lense 1.0	\$5.30
			4150	Sathers Sour Fruit Balls 4.25 oz	\$1.70			
			4156	Sathers Vanilla Caramels 3 oz	\$1.70			
			4387	Rocky Road 1.82 oz	\$1.40			



Item	Description	Price
Hygiene		
1	Crawford Shampoo Balsam & Protein 4 oz	\$1.65
2	Crawford Conditioner Balsam & Protein 4 oz	\$1.65
14	Suave Shampoo & Conditioner 12.6 oz	\$5.25
48	Softie Conditioner Coconut Oil 5 oz	\$2.75
55	Pro Glo Pomade Gel 4 oz	\$2.70
205	Freshscent Baby Oil 4 oz	\$1.80
210	Crawford Lotion Skin Care 4 oz	\$1.50
212	Infused Lotion Dly Bdy Coconut Lime 15 oz	\$2.95
215	Crawford Lotion Cocoa Butter 4 oz	\$1.50
250	Hydrocortisone Cream Max Strength 1% 1 oz	\$2.95
251	Athlete Ft Cream 1% Tolnaftate .5 oz	\$2.30
273	Chapet Lip Balm Regular Flavor .16 oz	\$2.10
320	Magic Shave Shave Cream Regular 6 oz	\$5.55
357	Elementz Shampoo Daily 15 oz	\$3.45
358	Elementz Conditioner Almond/Shea 15 oz	\$3.45
398	Dial Soap Antibacterial Bar 4 oz	\$1.80
439	Next 1 Soap Deodorant Hypoallergenic 3 oz	\$1.25
490	American Comb Soap Dish Hinged	\$0.85
520	Colgate Toothpaste Anticavity 2.5 oz	\$2.75
530	Cool Wave Toothpaste Gel Mint 4 oz	\$2.30
544	Loops Floss Loops Mint 30 pk	\$2.55
557	New World Toothbrush Antishank 1 ea	\$0.35
590	Freshmint Denture Tablet 40 ct	\$3.30
710	Playtex Tampon Unscent Gentle 20 ct	\$6.90
712	Preference Maxi Pad Regular 24 ct	\$3.70
713	Preference Pantishields 22 ct	\$1.90
720	Antifungal Powder Med Tolnaftate 1% 3 oz	\$2.65
784	Staydent Denture Adhesive Cream 2.4 oz	\$5.15

Item	Description	Price
Stationery & Games		
1015	Unisource Env No Clasp 9.5 x 12.5	\$0.45
1060	Tops Paper Ruled Pad 8.5 x 11 50 Sheet	\$1.40
1070	Tops Paper Sketch Pad 8.5 x 11 50 Sheet	\$1.35
1075	New World Imports Pencil Golf Type	\$0.20
1077	Quill Pencil #2 w/ Eraser	\$0.30
1080	Rose Art Colored Pencils 24 ct 3.5"	\$2.65
1085	Sanford Eraser Beveled	\$0.55
1086	Webster Dictionary Pocket	\$4.20
1101	Gallant Birthday Card Juvenile	\$2.10
1121	Gallant Seasonal Greeting Card	\$2.10
1123	Gallant Birthday Card Spanish Paper	\$2.10
1295	Sudoku Book Sudoku	\$3.70
1305	Aviator Playing Cards Pinochle	\$2.40
1308	Gen Book Word Find	\$4.20
800	New World Imports Comb 5"	\$0.25
821	Gen Brush Palm	\$0.65
825	Cardinal Afro Plk Nylon	\$0.35
855	J & D Pony Oh Terry Cloth	\$0.25
1256	Grainger Ear Plugs No Cord	\$0.60
1400	Becker Cereal Bowl w/ Lid 24	\$1.15
1415	Churchill Tumbler w/ Lid 22 oz	\$1.15
614	Acetaminophen Non Aspirin Regular 32	\$0.55
642	Roloids Antacid Regular Strength	\$1.35
671	Goodsense Cough Drops Cherry 30 ct	\$1.85

Item	Description	Price
Footwear		
1454	Crawford Flip Flop V Strap Large	\$1.65
8742	Orange Deck Shoe Slip On sz 6 M/8 W	\$9.55
8743	Orange Deck Shoe Slip On sz 7 M/9W	\$9.55
8744	Orange Deck Shoe Slip On sz 8 M/10 W	\$9.55
8749	Orange Deck Shoe Slip On sz 9 M/11 W	\$9.55
8766	Orange Deck Shoe Slip On sz 10 M/12 W	\$9.55
8771	Orange Deck Shoe Slip On sz 11/sz 13 W	\$9.55
8774	Orange Deck Shoe Slip On sz 12 M/14 W	\$9.55
8782	Orange Deck Shoe Slip On sz 13 M/15 W	\$9.55
8786	Orange Deck Canvas Slip On sz 14 M/16	\$9.55



SHERIFF'S OFFICE COUNTY OF HUMBOLDT

826 FOURTH STREET
EUREKA, CALIFORNIA 95501-0516 PHONE (707) 445-7251

For the meeting of: May 11, 2010

Date: April 21, 2010
To: BOARD OF SUPERVISORS
From: GARY PHILP, SHERIFF
Subject: APPROVE CONTRACT WITH KEEFE GROUP TO PROVIDE COMMISSARY SERVICES TO INMATES OF THE HUMBOLDT COUNTY CORRECTIONAL FACILITY

RECOMMENDATION(S):

That the Board of Supervisors:

1. Authorize the Chair to execute the attached three (3) copies of the Contract with the Keefe Commissary Group for services to inmates as provided under Penal Code section 4025, upon approval of County Counsel, as to form, and the Risk Manager for insurance purposes.
2. Direct the Clerk of the Board to return all documents to the Sheriff's Office, Attention Linda Modell for further processing. A fully executed original of the agreement will be returned for the Board files.

SOURCE OF FUNDING: None

DISCUSSION:

Pursuant to Penal Code section 4025, the Sheriff of each county may establish, maintain and operate a store in connection with the county jail. Money from inmate purchases are deposited into the Inmate Welfare Fund (IWF) to be used towards inmate programs inside the facility.

The Humboldt County Sheriff's Office (HCSO) has contracted with a commissary vendor for approximately 15 years. Several extensions have occurred with this contract and it was HCSO's decision to consider other vendors that could better meet the facilities needs. HCSO located a vendor (Keefe Commissary Group) to contract, with approval of the Purchasing Department. Contract language has been agreed upon by both parties and approved by County Counsel.

The use of an outside vendor for commissary needs, frees up needed staff to do correctional duties. In this agreement, Keefe will provide needed software and hardware to the facility that will further lessen the workload on staff.

Prepared by

CAO Approval

REVIEW

Auditor

County Counsel

Personnel

Risk Manager

Other

TYPE OF ITEM:

☒ X Consent
☐ Departmental
☐ Public Hearing
☐ Other

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor *Smith*
Seconded by Supervisor *Reilly*
And unanimously carried by those members present,

The Board hereby adopts the recommended action contained in this report.

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

Dated: *May 11 2010*
Kathy Hayes, Clerk of the Board

Mike Turner

KEEFE COMMISSARY NETWORK AGREEMENT

This Agreement (the "Agreement") is made and entered into as of this 1st day of April, 2010, by and between KEEFE COMMISSARY NETWORK, L.L.C. an affiliate of THE KEEFE GROUP, ("CONTRACTOR") and the County of Humboldt ("COUNTY").

WHEREAS, CONTRACTOR is in the business of supplying food and other related products to inmate commissary departments of correctional facilities throughout the United States, including the Humboldt County Correctional Facility (the "HCCF"); and,

WHEREAS, the parties wish to enter into a Commissary Agreement to facilitate the ordering of commissary supplies by HCCF inmates (the "Inmates") and the payment thereof; NOW, THEREFORE, in consideration of the mutual promises and conditions herein contained, it is agreed between the parties:

1. OPERATION OF COMMISSARY/ OBLIGATIONS OF COUNTY

COUNTY shall continue to maintain, and monitor Inmate money deposited into, the Inmate Trust Account, and shall deliver commissary Orders received by HCCF from CONTRACTOR to the Inmates.

2. OPERATION OF COMMISSARY/ OBLIGATIONS OF CONTRACTOR

On every Monday of every week, CONTRACTOR shall download all Orders placed by Inmates in the preceding seven (7) days. CONTRACTOR will bag, box, and ship such Orders to COUNTY for distribution by COUNTY to the Inmates, it being understood and agreed that said Orders shall be delivered to COUNTY no later than the Friday immediately following the Monday on which they are downloaded. CONTRACTOR shall bill COUNTY on a monthly basis for all such Orders.

CONTRACTOR shall keep the Commissary Computer Equipment (as such term is defined in Section 3 below) updated with complete information as to commissary items available, pricing, and other terms and conditions of sale.

3. COMPUTER EQUIPMENT

A. During the term of this Agreement, CONTRACTOR shall supply COUNTY with the computer hardware and software listed in Exhibit A (said software being referred to herein as the "CONTRACTOR Software," together with said hardware, the "Commissary Computer Equipment"). In the event that COUNTY elects to terminate the Agreement, other than due to breach of this Agreement by CONTRACTOR, COUNTY will promptly return all the Commissary Computer Equipment to CONTRACTOR, except as set forth in Paragraph D below of this Section.

B. CONTRACTOR hereby grants to COUNTY a royalty free license to use the CONTRACTOR Software. COUNTY acknowledges the proprietary nature of the

CONTRACTOR Software and/or related written software documentation and hereby agrees NOT to disclose, reproduce, transfer or use the software and/or documentation for any purpose other than those specifically allowed by the terms of this Agreement without specific written permission of an Officer of CONTRACTOR.

C. COUNTY agrees that it shall be responsible for any and all necessary wiring, network switches and hardware necessary for installation of the Commissary Computer Equipment, Inmate ordering kiosks, and the lobby deposit kiosk provided by CONTRACTOR.

D. CONTRACTOR agrees that the computer hardware listed in Exhibit C hereto is provided to COUNTY as a signing bonus (said hardware being referred to as the "Signing Bonus Hardware") and shall be excluded from any obligation COUNTY may have to return equipment provided and listed in Exhibit A. The Signing Bonus Hardware has an agreed upon value of fifteen thousand dollars (\$15,000). The Signing Bonus Hardware shall become the sole property of the COUNTY three (3) years from the effective date of this Agreement provided that the Agreement is still in effect at such time (said three years being referred to hereafter as the "First Three Years"). COUNTY shall provide maintenance and support for the provided computers following the three year period.

In the event of termination of this Agreement anytime prior to the expiration of the First Three Years, COUNTY shall either return the Signing Bonus Hardware or pay an early termination penalty to CONTRACTOR calculated as that amount equal to thirteen dollars and seventy cents (\$13.70) multiplied by the number of days left in the First Three Years.

4. PAYMENT

CONTRACTOR will invoice COUNTY on a monthly basis for Orders delivered in the prior month as set forth hereinabove in Section 2 (each such invoice being referred to hereafter as an "Invoice"). COUNTY will pay each such Invoice NET 30 DAYS from billing out of funds deposited into the Inmate Trust Account (each such payment being referred to as a "County Payment").

5. SERVICE FEE

A. The following terms as used in this Section 5 shall have the definitions set forth below: (a) "Noncommissioned Sales" are the sale of items listed in Exhibit B (attached hereto and incorporated by reference herein); and (b) "Adjusted Gross Sales" shall be that amount calculated by subtracting Noncommissioned Sales from gross sales of any Orders.

B. No later than ten (10) days following receipt by CONTRACTOR of a County Payment, CONTRACTOR shall pay COUNTY a service fee equal to thirty five percent (35%) of Adjusted Gross Sales for the corresponding Invoice.

C. In the event that the Inmate's funds available to purchase commissary products are inhibited in any way by change in policy from COUNTY, the parties hereto to renegotiate in good faith a corresponding reduction to the service fee paid to COUNTY.

6. MENU

Product selection and pricing will be agreed upon by INSTITUTION and CONTRACTOR. Menu selection shall be reviewed as needed, and no less than annually. All menu changes must be approved by COUNTY. Any price adjustments to menu items will be made yearly on the contract anniversary date (each such date being referred to hereafter as an "Annual Menu Adjustment Date", with any proposed price adjustments in between Annual Menu Adjustment Dates being subject to the prior approval of COUNTY.

7. FRIENDS AND FAMILY INMATE ORDERING SITE

A. The following terms as used in this Section 7 shall have the definitions set forth below: (a) Friends and Family Handling Charges shall be the cost to CONTRACTOR to handle and deliver Friends and Family Orders (as such term is defined below); and (b) "Family & Friends Adjusted Gross Sales" shall be that amount calculated by subtracting Friends & Family Handling Charges from gross sales of any Friends and Family Orders.

B. CONTRACTOR will maintain a customized website specifically designed for Humboldt County allowing friends and family of Inmates to order products to be delivered to Inmates (said orders being referred to hereafter as the "Friends & Family Orders") by CONTRACTOR and at CONTRACTOR's sole expense. CONTRACTOR and COUNTY will work together in good faith to agree on pricing and selection of these items no less than annually. This additional service will be provided by CONTRACTOR at no cost to COUNTY and will be an exclusive agreement whereby CONTRACTOR will be the sole provider of this program.

C. No later than fifteen (15) days following each month, COUNTY will be paid a service fee on all Friends & Family Orders which COUNTY has delivered to Inmates during the immediately preceding month. Said service fee shall be equal to thirty five percent (35%) of Family and Friends Adjusted Gross Sales for the applicable period.

8. TERM & TERMINATION

A. This Agreement shall continue in effect for a period of seven (7) years from the date hereof. The Agreement will automatically renew for three (3) successive four month terms thereafter, unless either party to this Agreement shall give notice in writing to the other party on or prior to 30 days prior to the expiration of any term or extended term that the party so giving notice does not wish to extend this Agreement.

B. Notwithstanding anything to the contrary contained in this Section 8, with the mutual written agreement of both parties and upon receipt and acceptance of not less than thirty (30) days written notice, this Agreement may be terminated on an agreed date prior to the end of any applicable term without penalty to either party.

C. Further notwithstanding anything to the contrary contained in this Section 8, COUNTY MAY IMMEDIATELY SUSPEND OR TERMINATE THIS Agreement in whole or in part where, in its sole discretion, the determination is made that there is (a) an illegal or

improper use of funds; (ii) a failure to comply with any term of this Agreement; (iii) a substantially incorrect or incomplete report submitted; or (iv) improperly performed service.

9. GOVERNING LAW

This Agreement shall be governed by the laws of the State of California. Any dispute arising hereunder or relating to this Agreement shall be litigated in the State of California and venue shall lie in the County of Humboldt.

10. ENTIRE AGREEMENT-WAIVER

This Agreement constitutes the entire Agreement between the parties with respect to the subject matter of this Agreement, and there are no other or further written or oral understandings or agreements with respect thereto. No variation or modification of the Agreement and no waiver of its provision shall be valid unless in writing and signed by the duly authorized officers of CONTRACTOR and COUNTY. This Agreement supersedes all other agreements between the parties.

11. INDEMNIFICATION

A. The parties shall indemnify, defend and hold harmless each other and their respective officers, officials, employees, and volunteers from any and all claims, demands, losses, damages, injury, death, and liabilities of any kind or nature, including attorney's fees, which are caused by the negligent or willful acts of misconduct or omissions (either directly or through or by their respective officers, agents or employees) in connection with their respective duties and obligations under this Agreement and any amendments hereto.

B. Notwithstanding the preceding paragraph, in the event that CONTRACTOR and COUNTY are both held to be negligently or willfully responsible, CONTRACTOR and COUNTY will bear their proportionate share of liability as determined in any such proceeding. Each side will bear their own costs and attorney fees.

C. Acceptance of insurance, if required by this Agreement, does not relieve CONTRACTOR from liability under this indemnification clause. This indemnification clause shall apply to all damages or claims for damages suffered by CONTRACTOR's operations regardless if any insurance is applicable or not.

12. NOTICES:

Any and all notice(s) required to be given pursuant to the terms of this Agreement shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Ed Wilkinson, Captain
Humboldt County Sheriff's Office
826 4th Street
Eureka, CA 95501

CONTRACTOR: Omar Parker, KCN Regional Manager
13369 Valley Blvd
Fontana, CA 92335

13. REPORTS:

CONTRACTOR agrees to provide COUNTY with any reports, which may be required by COUNTY, State or Federal agencies for compliance with this Agreement. Reports shall be submitted no later than fifteen (15) days after the end of each calendar quarter using the State-required format as appropriate.

14. RECORDS AND AUDITS:

A. CONTRACTOR agrees to timely prepare accurate and complete financial and performance records, and to maintain and preserve said records for at least five (5) years from the date of final payment under this Agreement, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising there from. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work performed.

B. All records referenced by this section shall be made available during normal business hours to inspection, audit and reproduction by any duly authorized agents of the State or COUNTY. CONTRACTOR agrees to allow interviews of any of its employees who might reasonably have information related to such records.

C. In the event of an audit exception or exceptions, the party responsible for not meeting the program requirement(s) shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because CONTRACTOR's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

15. CLIENT CONFIDENTIALITY:

A. CONTRACTOR shall protect from unauthorized disclosure the names and other identifying information concerning persons either receiving services pursuant to this Agreement, or persons whose names or identifying information become available to CONTRACTOR as a result of services performed under this Agreement, except for statistical information not identifying any such person.

B. CONTRACTOR shall not use such identifying information for any purpose other than carrying out CONTRACTOR's obligations under this Agreement.

16. CONFIDENTIAL INFORMATION:

In the performance of this Agreement, CONTRACTOR may receive information that is confidential information under state or federal law. CONTRACTOR agrees to comply with all laws regarding confidentiality and shall advise and require all subcontractors to comply with the laws of confidentiality.

17. NUCLEAR FREE CLAUSE:

CONTRACTOR certifies by its signature below that CONTRACTOR is not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. CONTRACTOR agrees to notify COUNTY immediately if it becomes a nuclear weapons contractor, as defined above. COUNTY may immediately terminate this Agreement if it determines that the forgoing certification is false or if CONTRACTOR becomes a nuclear weapons contractor.

18. INSURANCE REQUIREMENTS:

A. THIS CONTRACT SHALL NOT BE EXECUTED BY COUNTY and CONTRACTOR is not entitled to any rights, unless certificates of insurances, or other sufficient proof that the following provisions have been complied with, and such certificate(s) are filed with the Clerk of the Humboldt County Board of Supervisors.

B. Without limiting CONTRACTOR's indemnification obligations provided for herein, CONTRACTOR shall take out and maintain and shall require any of its subcontractors to take out and maintain, throughout the period of this Agreement and any extended term thereof, the following policies of insurance placed with insurers authorized to do business in California and with a current A.M. Bests rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of CONTRACTOR, its agents, officers, directors employees, licensees, invitees, assignees or subcontractors:

- a. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$1,000,000 per occurrence for any one incident, including, personal injury, death and property damage. If a general

aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be twice the required occurrence limit.

- b. Automobile and liability coverage in the minimum amount of one million dollars (\$1,000,000) combined single limit coverage including, but not limited to, owned, non-owned, leased and hired vehicles and trucks. Said coverage shall be at least as broad as Insurance Service Office Form Code 1 (any auto).
- c. Workers Compensation Insurance compensation coverage, if required by California Law, and in accordance with the statutory limits set forth therein. Said policy shall contain or be endorsed to contain a waiver of subrogation against COUNTY, its officers, agents, and employees.
- d. Professional liability insurance/errors and omission coverage in an amount no less than \$1,000,000 combined single limit (CSL). If insurance is written on a claim made basis, CONTRACTOR agrees to maintain such insurance in effect for at least three (3) years following completion of performance under this Agreement.
- e. Employers Liability coverage in a minimum amount of one million dollars (\$1,000,000) per accident for bodily injury and disease.
- f. Insurance Notices shall be sent to:

County of Humboldt
Attn: Risk Management
825 5th Street, Room 131
Eureka, CA 95501

C. Special Insurance Requirements. Said policies shall unless otherwise specified herein be endorsed with, the following provisions:

- a. The Comprehensive General Liability Policy shall provide that the COUNTY, its officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by or on behalf of CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to the COUNTY, its officers, officials, employees, and volunteers. Said policy shall also contain a provision stating that such coverage:

- i. Includes contractual liability.
 - ii. Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to "XCU Hazards".
 - iii. Is primary insurance as regards to COUNTY.
 - iv. Does not contain a pro-rata, excess only, and/or escape clause.
 - v. Contains a cross liability, severability of interest or separation of insureds clause.
- b. The policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY and in accordance with the Notice provisions set forth under Section 13. It is further understood that CONTRACTOR shall not terminate such coverage until it provides COUNTY with proof satisfactory to COUNTY that equal or better insurance has been secured and is in place.
- c. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.
- d. For claims related to this project, CONTRACTOR's insurance is primary coverage to the COUNTY, and any insurance or self-insurance programs maintained by the COUNTY are excess to CONTRACTOR's insurance and will not be called upon to contribute with it.
- e. Any failure to comply with reporting or other provisions of the Agreement, including breach of warranties, shall not affect coverage provided to COUNTY, its officers, officials, employees, and volunteers.
- f. CONTRACTOR shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement by COUNTY. The endorsements shall be on forms as approved by the COUNTY's Risk Manager. Any deductible or self-insured retention over \$100,000 shall be disclosed to and approved by COUNTY. If CONTRACTOR does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and CONTRACTOR agrees to pay the cost of said insurance. COUNTY is also hereby authorized with the discretion to deduct the cost thereof from the monies owed to CONTRACTOR under this Contract.
- g. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered and CONTRACTOR

shall be required to purchase additional coverage to meet the aggregate limits set forth above.

19. RELATIONSHIP OF PARTIES:

It is understood that this is an Agreement by and between two independent contractors and is not intended to, and shall not be construed to, create the relationship of agents, servant, employee, partnership, joint venture, or any other similar association. Both parties further agree that CONTRACTOR shall not be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, retirement benefits, worker's compensation and injury leave or other leave benefits.

20. COMPLIANCE WITH LAWS:

CONTRACTOR agrees to comply with all applicable local, state and federal laws and regulations, including but not limited to the Americans with Disabilities Act.

CONTRACTOR shall maintain licensure and certification requirements at all times during this Agreement. CONTRACTOR agrees that all professional level persons employed by CONTRACTOR have met applicable professional licensure requirements pursuant to State, Federal and County laws and regulations.

21. GENERAL PROVISIONS:

A. In the event that any provision of this Agreement be declared or found to be illegal, unenforceable, ineffective or void by any court of law, then each party shall be relieved of any obligations arising in such provision; the balance of this Agreement, if capable of performance, shall remain in full force and effect.

B. CONTRACTOR shall not delegate its duties or assign its rights hereunder, or both, either in whole or in part, without prior written consent of COUNTY. Any assignment by CONTRACTOR in violation of this provision shall be void, and shall be cause for immediate termination of the Agreement. This provision shall not be applicable to service agreements or contracts or similar arrangements usually or customarily entered into by CONTRACTOR to obtain or arrange for supplies, technical support or professional services.

C. All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and assigns.

D. The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

E. This Agreement contains all the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in its entirety any and all prior agreements of the parties.

22. **AMENDMENT:**

No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

23. **STANDARD OF PRACTICE:**

CONTRACTOR warrants that CONTRACTOR has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. CONTRACTOR's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

24. **TITLE TO INFORMATION AND DOCUMENTS:**

It is understood that any and all documents, information, and reports concerning this project prepared by and/or submitted by CONTRACTOR shall become the property of COUNTY. CONTRACTOR may retain copies for its own records. In the event of termination of this Agreement, for any reason whatsoever, CONTRACTOR shall promptly turn over all information, writings and documents to COUNTY without exception or reservation.

25. **MEDIA RELEASE:**

All press releases and informational material related to this Agreement shall receive approval from COUNTY prior to being released to the media (television, radio, newspapers, Internet). In addition, CONTRACTOR shall inform COUNTY of requests for interviews by media related to this Agreement prior to such interviews taking place. COUNTY reserves the right to have a representative present at such interviews. All notices required by this provision shall be given to the COUNTY Administrative Office, IT Division Director, or his designee.

26. **INFORMATION TECHNOLOGY ASSURANCES**

CONTRACTOR shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by CONTRACTOR in the performance of services under this Agreement, other than those owned or provided by COUNTY, shall be free from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to COUNTY under this Agreement.

27. **SUBCONTRACTS**

CONTRACTOR shall obtain prior written approval from COUNTY before subcontracting any of the services delivered under this Agreement. CONTRACTOR remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracts will be subject to all applicable provisions of this Agreement. CONTRACTOR shall be held responsible by COUNTY for the performance of any subcontractor whether approved by COUNTY or not.

28. **TIME**

Time is of the essence of this Agreement.

29. **INTERPRETATION**

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

30. **FORCE MAJEURE**

Neither CONTRACTOR nor COUNTY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing.

31. **AUTHORITY TO EXECUTE**

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates hereinafter indicated.

CONTRACTOR:



John Pericelli DATE: 4/16/10
Executive Vice President/ General Manager
Keefe Commissary Network, L.L.C.

COUNTY:



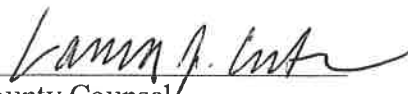
Chair, Board of Supervisors DATE: 5/11/10

ATTEST:



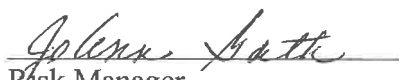
Clerk of the Board

APPROVED AS TO FORM:



County Counsel

INSURANCE REQUIREMENTS REVIEWED AND APPROVED:



Risk Manager

Exhibit "A"

Computer Equipment

The DELL computer hardware is provided, maintained, and warranted at no additional cost to the COUNTY for the life of the commissary agreement.

Type	Description	Qty
CPU	Dell PowerEdge 840, Dual Core 1.8GHz Pentium, 2GB RAM, 2x250 GBHD (Windows 2003 Server)	1
PTR	Dell Laser 2330dn 1 yr warranty + add'l 2 yr warranty	2
PTR	USB Printer Cable 2.0 Type A to Type B Cable - 6.6 ft	2
KIO	Kiosk Enclosure (no spares for < 15 kiosks, 1 spare per 15+ kiosks, 2 spares for 35+ kiosks) 1 spare	9
KIO	Kiosk WinTerm computer - v90L (no spares for < 15 kiosks, 1 spare per 15+ kiosks, 2 spares for 35+ kiosks)	9
KIO	Kiosk ELO touch screen monitor - 1537L (\$495 + \$32 = \$527) Monitor + Kit (no spares for < 15 kiosks, 1 spare per 15+ kiosks, 2 spares for 35+ kiosks)	9
KIO	Lobby Kiosk	1
KIO	Lobby Kiosk Runtime license	1
KIO	Lobby Kiosk Server License & Setup	1
SFT	AntiVirus Software (additional license)	1
MDM	U.S. Robotics Sportster 56K Ext	1

PC/Server includes monitor.

Note: Facility to provide appropriate internet access and wiring for lobby kiosk.

Commissary Agreement

Exhibit B

Noncommissioned Items For Inmate Orders

Stamped envelopes

Postage stamps

Indigent Kits

Admission Kits

On-site, special commissary item sales sold by HCCF

Exhibit C

Computer Equipment Signing Bonus

Type	Description	Qty
CPU	Dell Optiplex 780, 2.66 GHz Core 2 Duo, 2 GB RAM, 160 GBHD	10
PRT	Dell Laser printer 1110	10

