

STATE OF CALIFORNIA
PRISON HEALTH CARE SERVICES
3701 North Freeway Blvd, Sacramento, CA 95834
P.O. Box 4038, Suite 3701, 95812-4038

J. Clark Kelso, Receiver



January 20, 2010

TO: PROSPECTIVE BIDDER

RE: REQUEST FOR PROPOSAL (RFP) 09341, ADDENDUM NUMBER 9

CPHCS has attached responses to questions received from prospective bidders. CPHCS may be unable to respond to questions received after January 20, 2010.

Please note, CPHCS offices will be closed on Friday, January 22, 2010 as required by the [Governor's Executive Order \(S-13-09\)](#)

This RFP has been amended and the changes are included in the attached addendum #9.

If you have any questions or need assistance from this office, please do not hesitate to contact Debra Jones at debra.jones@cdcr.ca.gov.



Memorandum

RESPONSES TO QUESTIONS
NURSING RFP 09341
ADDENDUM #9

- **Our technical and cost proposals are already at the printer for spiral binding in preparation of sending it off early next week. We only have two cells in Addendum 7, Exhibit B-2 that appeared with XXXX's. Our intention was to white out the two cells and write in the total with our initials to the side. Will this be acceptable?**
 - Yes.
- **I am wondering about the insurance certificate requirement. Would it be okay to submit a certificate that currently doesn't name The California Department of Corrections and Rehabilitation as the certificate holder? Our insurance company wants to charge us a fee to have a certificate issued with that information. We would have it issued as requested if we are selected as a provider for the RFP.**
 - No.
- **In exhibit B-2 what goes in the "basis for award" space?**
 - *The basis for award will equal your bid amount.*
- **During the bidders conference you indicated that you would consider paying placement fee for Registry Nurses that CDCR offers permanent employment.**
 - *Yes, CPHCS may pay a placement fee to contractors and Exhibit B has been revised to reflect the provisions by which the placement fee would be paid. Exhibit B is attached to this response in its entirety.*
- **Exhibit D, Provision 42 – Is this stating that we must maintain medical records on all inmates that our staff provides care to?**
 - *No, this requirement pertains to contractors who provide services to inmate-patients off-site of the institution grounds. Exhibit D will be revised and is attached to this response in its entirety.*
- **I would like to know if the contract provides weekly time cards so that we can pay our nurses on a weekly basis. In addition, I was not able to obtain the payment terms. Are the terms net upon receipt or net 30 days? Please let me know.**

- *The contract does not specify the frequency of registries paying their personnel's salaries. The payment terms are specified in Exhibit B.*
- **Since we are limited in the number of sheets allowed in this RFP, I had inquired if we could submit 1 sheet of names for each specialty, to show we have contractors able to work. It seems wasteful to submit multiple, additional lists, especially if an employer or registry has several hundred personnel to work/choose from. Now it appears, since I don't know who will work at which facility or who is available when the contract begins, that it is okay not to include all the names. Please clarify what the State would like keep in mind, the Subcontractor /Consultant lists could grow quite lengthy if we had to list ALL our people who potentially could work during the 24 month contract.**
 - *The Subcontractor/Consultant list should not be included in the twenty-five (25) page proposal. Rather, it should be an attachment to the proposal. In addition, if you know the subcontractor/consultants that will be used in the performance of the agreement, then you will need to identify them on the Subcontractor/Consultant List. However, if you do not know the names of the subcontractor/consultants that will perform services then you do not need to identify their names on the Subcontractor/Consultant List.*
- **Has CDCR/CPHCS worked with companies that have not staffed in the California prison system in the past or ones that have a small presence in the overall state of California? And when you say short-term assignments are those less than 13 weeks?**
 - *CPHCS has worked both with companies that have a small presence in the overall State of California, as well as, the California Prison System. It is not possible to identify the term of assignment.*
- **I was looking for the Attachment 1 - Reference Information Sheet that was to be included in the last update.**
 - *Attachment 1 – Reference Information Sheet is attached to this response in its entirety.*
- **Do you require GSA filing prior to submittal, or at all?**
 - *This RFP makes no reference to a GSA filing requirement. The requirements for submittal of proposals are specified in Addendum #7, Section VI, pages 4 through 9 of the Request for Proposal Requirements. The link to Addendum #7 is www.cphcs.ca.gov/project_rfp.aspx.*
- **The RFP states that Proposal copies need to be “spiral” bound. Would 3 ring binders be sufficient?**
 - *No, the proposal must be spiral bound as indicated in the RFP submittal requirements.*

- **Addendum 7 explains that CDCR contacts may be used as references for key personnel who will be working on staffing for this RFP. However, will we be faced with certain CDCR contacts not willing to comply or give out references on our staff's behalf?**
 - *CDCR institution staff will be providing references for Non-JCAHO certified registries that have provided temporary relief nursing services within the last 24-months. This is different from the references that must be provided for the registries key personnel, such as the account manager. References for key personnel can be provided by anyone who can substantiate the ability of the individual to manage the delivery of services, and can include CDCR contacts. However, unlike the references for Non-JCAHO certified registries there is no requirement in the RFP for CDCR staff to provide references for key personnel.*

- **What should bidders include in the “Commitment of Resources” section of the RFP?**
 - *The Commitment of Resources should address the ability of the Respondent to provide the required number of resources for the institutions that they are bidding to provide services for.*



Attachment 1, Reference Information Sheet

(To be completed by non-JCAHO certified Registries)

Failure to complete and return this attachment with your bid will cause your bid to be rejected and deemed non-responsive. References must be from either all CDCR/CPHCS facilities that Contractor has provided temporary/relief RN, CNA, and LVN services to within the past twenty-four (24) months or; if no past experience with CDCR/CPHCS, from at least three organizations providing functions of similar scope to those that exist within the CDCR/CPHCS Healthcare setting. **Experience may not be considered if complete reference data is not provided or if the named client contact is unavailable or unwilling to share required information**

1. Name of Contractor	_____
Name of CDCR/CPHCS Facility or organization providing functions of similar scope	_____
Name and Title of Authorized Representative	_____
2. Name of Contractor	_____
Name of CDCR/CPHCS Facility or organization providing functions of similar scope	_____
Name and Title of Authorized Representative	_____
3. Name of Contractor	_____
Name of CDCR/CPHCS Facility or organization providing functions of similar scope	_____
Name and Title of Authorized Representative	_____
4. Name of Contractor	_____
Name of CDCR/CPHCS Facility or organization providing functions of similar scope	_____
Name and Title of Authorized Representative	_____
5. Name of Contractor	_____
Name of CDCR/CPHCS Facility or organization providing functions of similar scope	_____
Name and Title of Authorized Representative	_____

1. Invoicing and Payment

- a. For services satisfactorily rendered, and upon receipt and approval of contractor's invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with Exhibit B-1, Bid Proposal and the rates specified herein on Exhibit B-2, Rate Sheet, at the time of contract award which are attached hereto and made a part of this Agreement.
- b. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than Monthly in arrears to the appropriate Regional Accounting Office listed in Exhibit I, List of Regional Accounting Offices.

2. Budget Contingency Clause

- a. It is mutually agreed that if the California State Budget Act for the current fiscal year and/or any subsequent fiscal years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor, or to furnish any other considerations under this Agreement, and Contractor shall not be obligated to perform any provisions of this Agreement.
- b. If funding for the purposes of this program is reduced or deleted for any fiscal year by the California State Budget Act, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to Contractor to reflect the reduced amount.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927. Payment to small/micro businesses shall be made in accordance with and within the time specified in Chapter 4.5, Government Code 927 et seq.

4. Permanent Employment of Contractor Nursing Personnel

- a. The parties acknowledge that Contractor has agreements with its nursing personnel and incurs expenses in maintaining staffing resources. The parties further acknowledge that the California Department of Corrections and Rehabilitation (CDCR)/California Public Health Care Services (CPHCS) must comply with State civil service law, and other federal and state laws, regulations, and policies governing public employment.
- b. The parties agree that the CDCR/CPHCS may, without incurring a placement fee, hire Contractor nursing personnel at any time if such hiring is through the established State of California hiring process. Specifically, nursing personnel must be listed on a State of California employment list for the position for which CDCR/CPHCS hires them.

- c. Except as provided in Section 4(b) above, the CDCR/CPHCS will inform Contractor of its interest in hiring any of Contractor's nurses before CDCR/CPHCS tenders a written offer of employment to any such nurse.
- d. If the Contractor nursing personnel does not meet the requirement in Section 4(b) above, the parties agree that CDCR/CPHCS may hire Contractor nursing personnel without prejudice after:
 - (1) Completion of a ninety (90) day waiting period, beginning on the date that CDCR/CPHCS provides Contractor with written notice of its intent to hire, without payment of a placement fee, such nursing personnel. Nurses may continue to provide contracted services to CDCR/CPHCS during the ninety (90) day waiting period; or
 - (2) In lieu of the ninety (90) day waiting period, CDCR/CPHCS may pay a placement fee to Contractor, as detailed below. Once the placement fee is paid, the nurse, at the CDCR/CPHCS discretion, may be hired as a CDCR/CPHCS employee.

Total Hours Worked for CDCR/CPHCS Prior to Notice of Intent to Hire Placement Fee

8 hours to 520 hours - \$2,000
521 hours to 1,040 hours - \$1,000
1,041 hours to 2,080 hours - \$500
2,081 hours or more - No Fee Paid

- e. Section 4 shall only apply to the Department's hiring of Contractor nursing personnel for a CDCR employee position

5. Subcontractors

Nothing contained in this Agreement, or otherwise, shall create any contractual relation between the State and any subcontractors, and no contract shall relieve the Provider of Provider's responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

1. Dispute Resolution – Contract or Billing Disputes (Supersedes provision number 6, Disputes, of Exhibit C)

As a condition precedent to Provider's right to institute and pursue litigation or other legally available dispute resolution process, if any, Provider agrees that all disputes and/or claims of Provider arising under or related to the Agreement shall be resolved pursuant to the following processes. Provider's failure to comply with said dispute resolution procedures shall constitute a failure to exhaust administrative remedies.

Pending the final resolution of any such disputes and/or claims, Provider agrees to diligently proceed with the performance of the Agreement, including the delivering of goods or providing of services. Provider's failure to diligently proceed shall constitute a material breach of the Agreement.

a. Final Payment

The acceptance by Provider of final payment shall release the California Department of Corrections and Rehabilitation (CDCR) from all claims, demands and liability to Provider for all acts or omissions of CDCR and others relating to or arising out of this work except for any claim previously accepted and/or in process of resolution.

b. Verbal Appeal

Provider and the program or institution contract liaison, or other designated CPHCS employee of the unit for which the goods are being delivered or the service is being performed, shall first attempt in good faith to resolve the dispute or claim by informal discussion(s). The parties agree that CPHCS's Contracts Branch should be used as a resource in solving potential disputes.

c. Informal Appeal

If the issue is not resolved at the verbal appeal level, Provider shall file, within thirty (30) working days, an informal written appeal specifying: the issue(s) of dispute, legal authority or other basis for Provider's position, supporting evidence, and remedy sought, with the Director of the Administrative Support Division (ASD), CPHCS and provide a photocopy to the Deputy Director, CPHCS, Contracts Branch.

Provider shall identify the issues and the relief sought. Prior informal discussion(s) between Provider and CPHCS employee(s), shall be documented, dated, and signed by the authors.

The Deputy Director, California Prison Health Care Services, Contracts Branch or other designated CPHCS employee shall issue an informal written statement to Provider regarding the dispute within fifteen (15) calendar days following settlement or an impasse in the informal discussion(s) process. The written statement shall either: (1) document the dispute settlement and what, if any, conditions were reached; or, (2) document the reason(s) the dispute could not be resolved informally and provide notification to Provider of its option to file a formal appeal within thirty (30) days of the informal statement.

d. Formal Appeal – Administrative Resolution

If the dispute or claim is not resolved to Provider's satisfaction by the informal appeal process, Provider may file with the Director, ASD, CPHCS, a formal written appeal within thirty (30) calendar days of the date of CPHCS's informal written decision. The formal written appeal shall be addressed as follows:

(SUBJECT)

Director
California Department of Corrections and Rehabilitation
California Prison Health Care Services
Administration Support Division
P. O. Box 4038, Suite 300
Sacramento, CA 95812-4038

Provider shall specify in the formal written appeal the issue(s) in dispute, the particular relief or remedy sought, the factual basis for Provider's claim or dispute, and Provider's legal, technical and/or other authority upon which Provider bases its claim or dispute.

The formal written appeal shall include a written certification signed by a knowledgeable company official under the penalty of perjury according to the laws of the State of California pursuant to California Code of Civil Procedure Section 2015.5 that the dispute, claim, or demand is made in good faith, and that the supporting data are accurate and complete. If an Agreement adjustment is requested, the written certification shall further state under penalty of perjury that the relief requested accurately reflects the Agreement adjustment for which the CPHCS is responsible.

If Provider is a corporation, the written certification shall be signed by an officer thereof. If Provider is a sole proprietorship or partnership, it shall be signed by an owner or full partner. If Provider is other than a corporation, sole proprietorship or partnership, it shall be signed by a principal of the company with authority to bind the company.

The Director or representative shall issue a formal written decision within thirty (30) calendar days of receipt of the properly addressed formal written appeal. If mutually agreed by the parties, the date for the issuance of final written decision may be extended.

e. Further Resolution

If the dispute is not resolved by the formal appeal process to Provider's satisfaction, or Provider has not received a written decision from CPHCS after thirty (30) calendar days, or other mutually agreed extension, Provider may thereafter pursue its right to institute other dispute resolution process(es), if any, available under the laws of the State of California.

2. Right to Terminate (Supersedes provision number 7, Termination for Cause, of Exhibit C)

a. Termination of Agreement without Cause

Either party may terminate this Agreement without cause by giving not less than thirty (30) days written notice to the other party.

Notwithstanding provisions in this Agreement to the contrary, if the basis for termination without cause is CDCR's procurement of a health care network provider, including, but not limited to, health plan, preferred provider organization, or other health care network manager, CDCR may terminate this Agreement without cause by giving not less than thirty (30) days written notice to Contractor.

b. Termination of Agreement for Cause

(1) Immediate Termination

CPHCS may immediately terminate this Agreement under circumstances such as the following, or other such circumstances as would materially prejudice the right of inmates under this Agreement. The Agreement termination shall be effective as of the date indicated on CPHCS's notification to the Provider.

- (a) If CPHCS determines, based on reliable and factual information, that management practices adopted by Provider or the current financial condition of Provider interfere with the delivery of services or reduce the quality of such services; or,
 - (b) If CPHCS determines, based on reliable and factual information, there is a substantial probability that Provider is unable to render medical specialty services to inmates; or,
 - (c) If CPHCS determines, based on reliable and factual information, that any State or federal regulatory and/or law enforcement agency has taken any enforcement action (administrative or otherwise) against Provider, including but not limited to any investigation of Provider, Provider's staff, and/or subProviders; or,
 - (d) If CPHCS determines, based on reliable and factual information, that the institution is experiencing difficulty in securing treatment from Provider; or,
 - (e) If CPHCS determines, based on reliable and factual information, that Provider has failed to meet the terms, conditions and/or responsibilities of the Agreement.
- (2) Termination for Insolvency

CPHCS may terminate this Agreement immediately if Provider files any federal bankruptcy action or state receivership action, whether voluntarily or involuntarily; or if, based on reliable information, CPHCS determines there is a substantial probability that Provider will be financially unable to continue performance under this Agreement.

(3) Obligations Upon Termination

From and after the effective date of termination of this Agreement, Provider shall not be entitled to compensation for further services hereunder, except as expressly set forth in Alternative Arrangements Upon Termination.

Provider shall forthwith upon such termination, but in no event later than thirty (30) days following such termination:

- (a) Deliver to CPHCS a full accounting of the status of claims; and
- (b) Deliver to CPHCS all property and documents of CPHCS then in the custody of Provider.
- (c) All reports required from this agreement.

Despite termination, Provider or its solvent entity or administrator or receiver shall report to CPHCS on demand an update of the information in (a) and (b) above and any other relevant information.

The termination of this Agreement shall not relieve Provider of liability under the indemnification provisions.

The termination of this Agreement shall not relieve Provider of those duties under the Alternative Arrangements Upon Termination provision of this section.

Upon the termination of this Agreement for cause, all damages, losses and costs of CPHCS which flow from the breach shall be deducted from any sums due Provider hereunder and the balance, if any, shall be paid to Provider.

c. Alternative Arrangements Upon Termination

Upon cancellation of this Agreement, Provider agrees to assist CPHCS in securing alternative arrangements for the provision of care from another CPHCS contracted facility or health care Provider for those inmates receiving inpatient care at the time of termination. Provider further agrees to continue to provide adequate levels of health care services to inmates until alternative arrangements can be obtained. The rate of pay shall be consistent with the terms of this Agreement.

d. Assurances Upon Termination

Upon the termination of this Agreement for any reason whatsoever, Provider shall cooperate fully with CPHCS in order to effect an orderly transition of inmates to another facility. The foregoing shall include, without limitation, attending such post-termination meetings as shall be reasonably requested by CPHCS.

e. Governing Forum

This Agreement shall be interpreted, administered, and enforced according to the laws of the State of California (without regard to any conflict-of-laws provision), except as preempted by federal law. Any suit brought hereunder shall be brought in the State and federal courts sitting in Sacramento, California, the parties hereby waiving any claim or defense that any such forum is not convenient or proper. Each party agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by California law.

3. Responsibility Hearing

If this Agreement is terminated for cause, CPHCS reserves the right to conduct a responsibility hearing to determine if the Provider is a responsible bidder before an award of future agreements can be made.

4. Workers' Compensation – If Applicable

Provider hereby represents and warrants that Provider is currently and shall, for the duration of this agreement, carry workers' compensation insurance, at Provider's expenses, or that it is self-insured through a policy acceptable to the CPHCS, for all of the Provider's Staff, and/or anyone representing the Provider, including Sub-Providers who will be engaged in the performance of this agreement. Such coverage will be a condition of CPHCS's obligation to pay for services provided under this agreement.

Prior to approval of this agreement and before performing any work, Provider shall furnish to the State evidence of valid workers' compensation coverage. Provider agrees that the workers' compensation insurance shall be in effect at all times during the term of this agreement. In the event said insurance coverage expires or is canceled at any time during the term of this

agreement, Provider agrees to give at least thirty (30) days prior notice to CPHCS before said expiration date or immediate notice of cancellation. Evidence of coverage shall not be for less than the remainder of the term of the agreement or for a period of not less than one year. The State reserves the right to verify the Provider's evidence of coverage. In the event the Provider fails to keep workers' compensation insurance coverage in effect at all times, the State reserves the right to terminate this agreement and seek any other remedies afforded by the laws of this State.

Provider also agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all of Provider's, Provider's Staff, and/or anyone representing the Provider, including Sub-Providers related to any non-performance of this section.

5. Computer Software Management Memo

Provider certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

6. Liability for Nonconforming Work

The Provider will be fully responsible for ensuring that the completed work conforms to the agreed upon terms. CPHCS, in its sole discretion, may use any reasonable means to cure any nonconformity. The Provider shall be responsible for reimbursing CPHCS for any additional expenses incurred to cure such defects.

7. Liability for Loss and Damages

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

8. Temporary Nonperformance

If, because of mechanical failure or for any other reason, the Provider shall be temporarily unable to perform the work as required, the State, during the period of the Provider's inability to perform, reserves the right to accomplish the work by other means and shall be reimbursed by the Provider for any additional costs above the Agreement price.

9. Extension of Terms

This Agreement may be amended to extend the term if it is determined to be in the best interest of the State. Upon signing the amendment, Provider hereby agrees to provide services for the extended period at the rates specified in the original Agreement.

10. Accounting Principles/ No Dual Compensation

The Provider will adhere to generally accepted accounting principles as outlined by the American Institute of Certified Public Accountants. Dual compensation is not allowed; a Provider cannot receive simultaneous compensation from two or more funding sources for the same services performed even though both funding sources could benefit.

11. SubProvider/Consultant Information

Provider is required to identify all subProviders and consultants who will perform labor or render services in the performance of this Agreement. Additionally, the Provider shall notify the Department of Corrections and Rehabilitation, California Prison Health Care Services, Contracts Branch within ten (10) working days, of any changes to the subProvider and/or consultant information.

12. Employment of Ex-Offenders

Provider cannot and will not either directly, or on a subcontract basis, employ in connection with this Agreement:

- a. Ex-Offenders on active parole or probation;
- b. Ex-Offenders at any time if they are required to register as a sex offender pursuant to Penal Code Section 290 or if such ex-offender has an offense history involving a "violent felony" as defined in subparagraph (c) of Penal Code Section 667.5; or
- c. Any ex-felon in a position which provides direct supervision of parolees.

Ex-Offenders who can provide written evidence of having satisfactorily completed parole or probation may be considered for employment by the Provider subject to the following limitations:

- a. Provider shall obtain the prior written approval to employ any such ex-offender from the Authorized Administrator; and
- b. Any ex-offender whose assigned duties are to involve administrative or policy decision-making; accounting, procurement, cashiering, auditing, or any other business-related administrative function shall be fully bonded to cover any potential loss to the State of California.

13. Electronic Waste Recycling

The Provider certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Provider shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

14. Licenses and Permits

The Provider shall be an individual or firm licensed to do business in California and shall obtain at Provider's expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this Agreement.

In the event any license(s) and/or permit(s) expire at any time during the term of this Agreement, Provider agrees to provide the CPHCS with a copy of the renewed license(s) and/or permit(s) within thirty (30) days following the expiration date. In the event the Provider fails to keep in effect at all times all required license(s) and permit(s), the State may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

15. Excise Tax

The State of California is exempt from federal excise taxes; no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

16. Permits and Certifications from State Board of Equalization

This solicitation and any resulting contract shall be subject to all requirements as set forth in Sections 6487, 7101 and sections 6452.1, 6487.3, 18510 of the Revenue and Taxation Code, and section 10295.1 of the Public Contract Code requiring suppliers to provide a copy of their reseller's permit or certification of registration and, if applicable, the permit or certification of all participating affiliates, issued by California's State Board of Equalization. Effective January 1, 2004, awarding departments must obtain, prior to award, copies of the permits or certifications from the proposed awardee. Failure of the supplier to comply by supplying the required permit or certification will cause the supplier's bid response to be considered non-responsive and their bid rejected. Unless otherwise specified in this solicitation, a copy of the reseller's permit or certification of registration must be supplied within five (5) state business days of the request made by the State

17. Conflict of Interest

The Provider and their employees shall abide by the provisions of Government Code (GC) Sections 1090, 81000 et seq., 82000 et seq., 87100 et seq., and 87300 et seq., Public Contract Code (PCC) Sections 10335 et seq. and 10410 et seq., California Code of Regulations (CCR), Title 2, Section 18700 et seq. and Title 15, Section 3409, and the Department Operations Manual (DOM) Section 31100 et seq. regarding conflicts of interest.

a. Providers and Their Employees

Consultant Providers shall file a Statement of Economic Interests, Fair Political Practices Commission (FPPC) Form 700 prior to commencing services under the Agreement, annually during the life of the Agreement, and within thirty (30) days after the expiration of the Agreement. Other service Providers and/or certain of their employees may be required to file a Form 700 if so requested by the CPHCS or whenever it appears that a conflict of interest may be at issue. Generally, service Providers (other than consultant Providers required to file as above) and their employees shall be required to file an FPPC Form 700 if one of the following exists:

- (1) The Agreement service has been identified by the CPHCS as one where there is a greater likelihood that a conflict of interest may occur;
- (2) The Provider and/or Provider's employee(s), pursuant to the Agreement, makes or influences a governmental decision; or
- (3) The Provider and/or Provider's employee(s) serves in a staff capacity with the CPHCS and in that capacity participates in making a governmental decision or performs the same or substantially all the same duties for the CPHCS that would otherwise be performed by an individual holding a position specified in the CPHCS's Conflict of Interest Code.

b. Current State Employees

- (1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- (2) No officer or employee shall contract on his or her own behalf as an independent Provider with any state agency to provide goods or services.
- (3) In addition to the above, CPHCS officials and employees shall also avoid actions resulting in or creating an appearance of:
 - (a) Using an official position for private gain;
 - (b) Giving preferential treatment to any particular person;
 - (c) Losing independence or impartiality;
 - (d) Making a decision outside of official channels; and
 - (e) Affecting adversely the confidence of the public or local officials in the integrity of the program.
- (4) Officers and employees of the Department must not solicit, accept or receive, directly or indirectly, any fee, commission, gratuity or gift from any person or business organization doing or seeking to do business with the State.

c. Former State Employees

- (1) For the two year (2-year) period from the date he or she left state employment, no former state officer or employee may enter into an Agreement in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the Agreement while employed in any capacity by any state agency.
- (2) For the twelve-month (12-month) period from the date he or she left state employment, no former state officer or employee may enter into an Agreement with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed Agreement within the 12-month period prior to his or her leaving state service.

In addition to the above, the Provider shall avoid any conflict of interest whatsoever with respect to any financial dealings, employment services, or opportunities offered to inmates or parolees. The Provider shall not itself employ or offer to employ inmates or parolees either directly, or indirectly through an affiliated company, person or business unless specifically authorized in writing by the CPHCS. In addition, the Provider shall not (either directly, or indirectly through an affiliated company, person or business) engage in financial dealings with inmates or parolees, except to the extent that such financial dealings create no actual or potential conflict of interest, are available on the same terms to the general public, and have been approved in advance in writing by the CPHCS. For the purposes of this paragraph, "affiliated company, person or business" means any company, business, corporation, nonprofit corporation, partnership, limited partnership, sole proprietorship, or other person or business entity of any kind which has any ownership or control interest whatsoever in the Provider, or which is wholly or partially owned (more than 5% ownership) or controlled (any percentage) by the Provider or by the Provider's owners, officers, principals, directors and/or shareholders, either directly or indirectly. "Affiliated companies, persons or businesses" include, but are not limited to, subsidiary, parent, or sister companies or corporations, and any company, corporation, nonprofit corporation, partnership, limited partnership, sole proprietorship, or other person or business entity of any kind that is wholly or partially owned or controlled, either directly or indirectly, by the Provider or by the Provider's owners, officers, principals, directors and/or shareholders.

The Provider shall have a continuing duty to disclose to the State, in writing, all interests and activities that create an actual or potential conflict of interest in performance of the Agreement.

The Provider shall have a continuing duty to keep the State timely and fully apprised in writing of any material changes in the Provider's business structure and/or status. This includes any changes in business form, such as a change from sole proprietorship or partnership into a corporation or vice-versa; any changes in company ownership; any dissolution of the business; any change of the name of the business; any filing in bankruptcy; any revocation of corporate status by the Secretary of State; and any other material changes in the Provider's business status or structure that could affect the performance of the Provider's duties under the Agreement.

If the Provider violates any provision of the above paragraphs, such action by the Provider shall render this Agreement void.

Members of boards and commissions are exempt from this section if they do not receive payment other than payment for each meeting of the board or commission, payment for preparatory time and payment for per diem.

18. Disclosure

Neither the State nor any State employee will be liable to the Provider or its staff for injuries inflicted by inmates or parolees of the State. The State agrees to disclose to the Provider any statement(s) known to State staff made by any inmate or parolee which indicates violence may result in any specific situation, and the same responsibility will be shared by the Provider in disclosing such statement(s) to the State.

19. Security Clearance/Fingerprinting

The State reserves the right to conduct fingerprinting and/or security clearance through the Department of Justice, Bureau of Criminal Identification and Information (BCII), prior to award and at any time during the term of the Agreement, in order to permit Provider and/or Provider's employees' access to State premises. Provider is responsible for having all employees, subProviders, or other personnel responsible for discharging Provider's duties and obligations under this Agreement to obtain a completed Live Scan Background check at the Provider's cost as part of the credentialing requirements to perform services on-site at the institutions. The State further reserves the right to terminate the Agreement should a threat to security be determined.

20. Notification of Personnel Changes

Provider must notify the State, in writing, of any changes of those personnel allowed access to State premises for the purpose of providing services under this Agreement. In addition, Provider must recover and return any State-issued identification card provided to Provider's employee(s) upon their departure or termination.

21. Non Eligible Alien Certification

By signing this Agreement Provider certifies, under penalty of perjury, that Provider, if a sole proprietor, is not a nonqualified alien as that term is defined by the United States Code (U.S.C.) Title 8, Chapter 14, Section 1621 et seq.

Sections 22 through 25 apply to services provided on departmental and/or institution grounds:

22. Bloodborne Pathogens

Provider shall adhere to California Division of Occupational Safety and Health (CAL-OSHA) regulations and guidelines pertaining to bloodborne pathogens.

23. Tuberculosis (TB) Testing

In the event that the services required under this Agreement will be performed within a CPHCS institution/parole office/community based program, prior to the performance of contracted duties, Providers and their employees who are assigned to work with inmates/parolees on a regular basis shall be required to be examined or tested or medically evaluated for TB in an infectious or contagious stage, and at least once a year thereafter or more often as directed by CPHCS. Regular basis is defined as having contact with inmates/parolees in confined quarters more than once a week.

Providers and their employees shall be required to furnish to CPHCS, at no cost to CPHCS, a form CDCR 7336, "Employee Tuberculin Skin Test (TST) and Evaluation," prior to assuming their contracted duties and annually thereafter, showing that the Provider and their employees have been examined and found free of TB in an infectious stage. The form CDCR 7336 will be provided by CPHCS upon Provider's request.

The CDCR 7336 form is required to have completed thirty (30) days or less prior to be provided to CPHCS as verification of the testing and evaluation.

24. Primary Laws, Rules, and Regulations Regarding Conduct and Association with State Prison Inmates

Individuals who are not employees of the CDCR/CPHCS, but who are working in and around inmates who are incarcerated within California's institutions/facilities or camps, are to apprise themselves of the laws, rules and regulations governing conduct in associating with prison inmates. Prior to initial entry onto institution grounds Provider will receive a summary of the pertinent rules and regulations regarding conduct when non-departmental employees come into contact with prison inmates.

By signing this contract, the Provider agrees that if the provisions of the contract require the Provider to enter an institution/facility or camp, the Provider and any employee(s) and/or subProvider(s) shall be made aware of and shall abide by the following laws, rules and regulations governing conduct in associating with prison inmates:

- a. Persons who are not employed by CDCR/CPHCS, but are engaged in work at any institution/facility or camp must observe and abide by all laws, rules and regulations governing the conduct of their behavior in associating with prison inmates. Failure to comply with these guidelines may lead to expulsion from CDCR institutions/facilities or camps.

SOURCE: California Penal Code (PC) Sections 5054 and 5058; California Code of Regulations (CCR), Title 15, Sections 3285 and 3415

SPECIAL TERMS AND CONDITIONS & ADDITIONAL PROVISIONS

Exhibit D

- b. CDCR does not recognize hostages for bargaining purposes. CDCR has a “NO HOSTAGE” policy and all prison inmates, visitors, and employees shall be made aware of this.

SOURCE: PC Sections 5054 and 5058; CCR, Title 15, Section 3304

- c. All persons entering onto institution/facility or camp grounds consent to search of their person, property or vehicle at any time. Refusal by individuals to submit to a search of their person, property, or vehicle may be cause for denial of access to the premises.

SOURCE: PC Sections 2601, 5054 and 5058; CCR, Title 15, Sections 3173, 3177, and 3288

- d. Persons normally permitted to enter an institution/facility or camp may be barred, for cause, by the CDCR Director, Warden, and/or Regional Parole Administrator.

SOURCE: PC Sections 5054 and 5058; CCR, Title 15, Section 3176 (a)

- e. It is illegal for an individual who has been previously convicted of a felony offense to enter into CDCR institutions/facilities or camps without the prior approval of the Warden. It is also illegal for an individual to enter onto these premises for unauthorized purposes or to refuse to leave said premises when requested to do so. Failure to comply with this provision could lead to prosecution.

SOURCE: PC Sections 602, 4570.5 and 4571; CCR, Title 15, Sections 3173 and 3289

- f. Encouraging and/or assisting prison inmates to escape is a crime. It is illegal to bring firearms, deadly weapons, explosives, tear gas, drugs or drug paraphernalia on CDCR institutions/facilities or camp premises. It is illegal to give prison inmates firearms, explosives, alcoholic beverages, narcotics, or any drug or drug paraphernalia, including cocaine or marijuana.

SOURCE: PC Sections 2772, 2790, 4533, 4535, 4550, 4573, 4573.5, 4573.6 and 4574

- g. It is illegal to give or take letters from inmates without the authorization of the Warden. It is also illegal to give or receive any type of gift and/or gratuities from prison inmates.

SOURCE: PC Sections 2540, 2541 and 4570; CCR, Title 15, Sections 3010, 3399, 3401, 3424 and 3425

- h. In an emergency situation the visiting program and other program activities may be suspended.

SOURCE: PC Section 2601; CCR, Title 15, Section 3383

- i. For security reasons, visitors must not wear clothing that in any way resembles state issued prison inmate clothing (blue denim shirts, blue denim pants).

SOURCE: CCR, Title 15, Section 3171 (b) (3)

- j. Interviews with SPECIFIC INMATES are not permitted. Conspiring with an inmate to circumvent policy and/or regulations constitutes a rule violation that may result in appropriate legal action.

SOURCE: CCR, Title 15, Sections 3261.5, 3315 (3) (W), and 3177.

25. Gate Clearance

Provider and Provider's employee(s) and/or subProvider(s) must be cleared prior to providing services. The Provider will be required to complete a Request for Gate Clearance for all persons entering the facility a minimum of ten (10) working days prior to commencement of service. The Request for Gate Clearance must include the person's name, social security number, valid state driver's license number or state identification card number and date of birth. Information shall be submitted to the Contract Liaison or his/her designee. CPHCS uses the Request for Gate Clearance to run a California Law Enforcement Telecommunications System (CLETS) check. The check will include Department of Motor Vehicles check, Wants and Warrants check, and Criminal History check.

Gate clearance may be denied for the following reasons: Individual's presence in the institution presents a serious threat to security, individual has been charged with a serious crime committed on institution property, inadequate information is available to establish positive identity of prospective individual, and/or individual has deliberately falsified his/her identity.

All persons entering the facilities must have a valid state driver's license or photo identification card on their person.

26. Disabled Veteran Business Enterprise (DVBE)

Agreements Exempt from DVBE (exempt by statute or CDCR policy, medical, IDL, etc.)

If this Agreement is exempt from DVBE requirements, CDCR requests your assistance in achieving legislatively established goals for the participation of DVBEs by reporting any certified DVBEs that will be used in the performance of this Agreement.

27. Personnel (Approval/Disapproval)

Provider agrees to allow CPHCS the right to 1) approve, in advance, any personnel to be assigned to this contract, and 2) disapprove the continuing assignment of any personnel. If any employee of the Provider is unable to perform due to illness, resignation or other factors beyond the Provider's control, the Provider shall immediately provide acceptable substitute personnel.

The Provider shall report in writing the resignation or dismissal of personnel who are an essential part of the successful operation of the contracted program. The CPHCS may immediately terminate the Agreement if the replacement of personnel is detrimental to the program as determined by the CPHCS.

28. Insurance Requirements – If Applicable

Insurance as required herein shall be a condition of the State's obligation to pay for services provided under this Agreement. Prior to approval of this Agreement and before performing any work, Provider and any subProvider shall furnish to the State evidence of valid coverage. The following shall be considered evidence of coverage: A certificate of insurance, a "true and certified"

SPECIAL TERMS AND CONDITIONS & ADDITIONAL PROVISIONS

Exhibit D

copy of the policy, or any other proof of coverage issued by Provider's insurance carrier. Binders are not acceptable as evidence of coverage. Providing evidence of coverage to the State conveys no rights or privileges to the State, nor does it insure any State employee or insure any premises owned, leased, used by or otherwise or under the control of the State. It does, however, serve to provide the State with proof that the Provider and any subProvider is insured at the minimum levels required by the State of California.

Provider agrees that any liability insurance required in the performance of this Agreement shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires or is canceled during the term of this Agreement, Provider's insurance Provider must agree to give at least thirty (30) days prior notice to the State before said expiration date or notice of cancellation. Evidence of coverage required in the performance of this Agreement shall not be for less than the remainder of the term of this Agreement or for a period of not less than one year. The State and the Department of General Services (DGS) reserve the right to verify the Provider's evidence of coverage; evidence of coverage is subject to the approval of the DGS. In the event the Provider fails to keep insurance coverage as required herein in effect at all times, the State reserves the right to terminate this Agreement and to seek any other remedies afforded by the laws of the State of California.

Self-insured public entities **MUST** provide proof of self-insurance.

Provider hereby represents and warrants that Provider is currently and shall remain, for the duration of this Agreement at Provider's own expense, insured against:

a. **Commercial General Liability – (If Applicable)**

Provider agrees to carry a minimum of \$1,000,000 per occurrence for bodily injury and property damage liability combined **(Required if the services are provided at the Provider's facility/office)**.

The certificate of insurance **must** include the following provisions:

- The insurer will not cancel the insured's coverage without 30 days prior written notice to the State. The California Department of Corrections and Rehabilitation must be named as the "Certificate Holder" and list the following:

State of California
California Department of Corrections and Rehabilitation (CDCR)
California Prison Health Care Services (CPHCS)
Contract Branch
P. O. Box 4038
Sacramento, CA 95812-4038

- The State of California, its officers, agents, employees, and servants are hereby named as additional insured, but only with respect to work performed for the State of California. *(Not required for Professional Liability Insurance)*.

b. **Auto Liability – (If Applicable)**

Provider certifies that Provider and any employees, subProviders and/or referred personnel providing services on-site at CDCR institutions possess valid automobile coverage in accordance with California Vehicle Code Sections 16450 to 16457, inclusive. The State reserves the right to request proof of insurance at any time. Coverage shall be maintained throughout the term of this Agreement. In the event the Provider or any employee, subProvider and/or referred personnel of the Agreement fails to keep the proper insurance coverage in effect at all times, the State may, in addition to any other remedies it may have, terminate the contract.

If Provider is performing services using a mobile MRI, CT, Mammography on institution grounds:

Provider agrees to carry automobile liability coverage of \$1,000,000 per claim if Provider transports equipment onto institution grounds in the performance of services under this Agreement.

c. **Professional Liability – (If Applicable)**

Provider agrees to carry a minimum coverage of \$1,000,000 per claim up to an annual aggregate of \$3,000,000 for professional liability.

Such coverage(s) as referenced shall be a condition of the CPHCS's obligation to pay for services provided under this contract. Prior to approval of this contract and before performing any work, Provider shall furnish to the State evidence of valid coverage. The following shall be considered evidence of coverage: a certificate of insurance, a "true and certified" copy of the policy, or any other proof of coverage issued by Provider's insurance carrier or proof of self-insurance. Binders are not acceptable as evidence of coverage per California Insurance Code, Section 382.5.

Providing evidence of coverage to the State does not convey any rights or privileges to the CPHCS. It does, however, serve to provide the State with proof that the Provider is insured up to the required minimums, as required by California law. By signing this Agreement, the Provider certifies that the professional liability insurance carrier has knowledge of the Provider's extension of services to CDCR inmates. Such action conveys no coverage to the State under the Provider's policy nor does it insure any State employee or insure any premises owned, leased, or otherwise used by or under the control of the State with respect to coverage.

Provider agrees that the liability insurance herein provided for shall be in effect at all times during the term of this contract. In the event said insurance coverage expires or is canceled at any time during the term of this contract, Provider agrees to give, at least thirty (30) days prior notice to the State before said expiration date or immediate notice of cancellation. Evidence of coverage as provided for herein shall not be for less than the remainder of the term of the contract or for a period of not less than one year. CDCR/CPHCS and the Department of General Services (DGS) reserve the right to verify the Provider's evidence of coverage; evidence of coverage is subject to the approval of the DGS. In the event the Provider fails to keep in effect at all times insurance coverage as herein provided, the State reserves the right to terminate this contract and seek any other remedies afforded by the laws of this State.

Provider also agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any claims and losses resulting from actby Provider's officers, agents and employees related to the performance of this agreement.

29. Authority

Provider hereby recognizes that this Agreement is entered into under the authority of the California Penal Code, Section 5054, which places the responsibility for the custody and care of California's institutionalized public offenders on the Secretary of CDCR, and California Code of Regulations (CCR) Title 15, which authorizes the Secretary of CDCR to contract for the provision of inmate health care services.

Provider hereby recognizes that this agreement is entered into under the authority of the Receiver appointed under the Court Order No. C01-1351 THE Marciano Plata, et al., vs. Arnold Schwarzenegger, et al., which places the responsibility for all medical care of CDCR institutionalized public offenders on the Receiver.

30. Small Business and DVBE Participation – Commercially Useful Functions

This solicitation and any resulting Agreement shall be subject to all requirements as set forth in AB 669, Statutes of 2003 pertaining to the following code sections: Government Code Sections 14837, 14838.6, 14839, 14842, 14842.5 and Military and Veterans Code (MVC) Sections 999, 999.6, 999.9. In part, these code sections involve requirements to qualify as a California certified Small Business, Microbusiness and DVBE. Effective January 1, 2004, the aforementioned companies must perform a **commercially useful function** to be eligible for award. AB 669 also requires that the DVBE be "domiciled" in California. Failure of the supplier to comply with the definition of and detailed requirements for providing a **commercially useful function** will cause the supplier's bid response to be considered non-responsive and their bid will be rejected. Also, Providers found to be in violation of certain provisions contained within these code sections may be subject to loss of certification, penalties and Agreement cancellation.

31. Duly Organized

Provider is duly organized, qualified and validly existing and in good standing under the laws of this State and in all other jurisdictions where Provider is conducting business. Provider has all requisite power and authority to own and operate its properties and to carry on its business as and where now conducted and to enter into and perform its obligations under this Agreement.

32. Authorizations

Provider has completed, obtained and performed all registration, filings, approvals, authorizations, consents or examinations required by any government or governmental authority for its acts under this Agreement.

33. Reimbursement for the Paroled

Provider understands and agrees that CDCR does not have statutory authority to render payment for services provided to parolees (California Code of Regulations Title 15, Section 3356). In the event that an inmate reaches his/her parole date while in the care of the Provider, the appropriate CPHCS Health Care Manager or physician designee shall notify, no later than ten (10) working days before the date of parole, the parolee's appropriate CDCR Parole Region and the inmate/patient's upcoming parole date and medical status. The CMO or Health Care Manager shall make a good faith effort to notify the Provider if an inmate/patient's parole date is expected to occur while the inmate/patient is under the Provider's care.

The appropriate Parole Region will notify the Agent of Record who will assist in providing for appropriate follow-up care to include:

- a. Transfer to a community health facility in the geographic vicinity of the parole region; or
- b. Continued care in the existing community health facility with arrangements for continued payment by the county of residence and/or enrollment in the Medi-Cal Program; or
- c. Transfer to outpatient care in the area of the parole release

Provider agrees that under no circumstances shall the parole date prevent an inmate from receiving emergency medical services or result in being discharged prematurely.

34. Exempt from Public Disclosure – (Applicable to Confidential Contracts)

Government Code (GC) 6254.14 exempts the CDCR from publicly disclosing the terms and conditions of its negotiated health care agreements. Except for required disclosures set forth in GC 6254.14, CDCR and Provider agree to protect the confidentiality of the terms and conditions of this Agreement and any amendment for one (1) year after execution, and to protect the confidentiality of the rates contained in this Agreement and any amendment for four (4) years after execution.

35. Health Records

- a. Health records shall be kept in accordance with CCR, Title 22, Section 70751, on all inmate/patients admitted for treatment and inmates receiving emergency services, outpatient services and/or outpatient surgeries. All required inmate/patient health records, either originals or accurate reproduction of the contents of such originals, shall be maintained by Provider, or his/her authorized medical staff, in such form as to be legible and readily available upon request by authorized representatives of CDCR, CPHCS and any other person authorized by law to make such a request.
- b. Provider shall safeguard the information in all health records of CDCR inmates against loss, defacement, tampering or use by unauthorized persons.
- c. Inmate/patient health records including x-ray films or reproductions thereof shall be preserved safely for a minimum of seven (7) years following discharge of the inmate/patient in accordance with CCR, Title 22, Section 70751.
- d. Provider shall provide copies of inmate/patient health records or information within health records, as requested by CPHCS, at no additional charge.

36. Right to Receive and Release Information

For the purpose of enforcing or interpreting this Agreement, or resolving any dispute regarding the provisions under this Agreement, whether administrative or medical, both parties agree to share all relevant information, including inmate/patient data, subject to applicable law.

37. Confidentiality of Health Information

CPHCS and Provider agree that all inmate/patient health information is identified as confidential and shall be held in trust and confidence and shall be used only for the purposes contemplated under this Agreement.

Provider by acceptance of this Agreement is subject to all of the requirements of the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (Code of Federal Regulations (CFR), Title 45, Sections 164.501 et seq.); the California Government Code

Section 11019.9; California Civil Code Sections 56 et seq.; and California Civil Code Sections 1798, et seq.; regarding the collections, maintenance, and disclosure of personal and confidential information about individuals. Attached as Exhibit "G" and incorporated herein is a Business Associate Agreement which memorializes the parties' duties and obligations with respect to the protection, use, and disclosure of protected health information.

38. Confidentiality of Data

All financial, statistical, personal, technical and other data and information relating to State's operation, and any other data which is designated confidential by the State and made available to carry out this Agreement, or which become available to the Provider in order to carry out this Agreement, shall be protected by the Provider from unauthorized use and disclosure.

If the methods and procedures employed by the Provider for the protection of the Provider's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used with the written consent of the State. The Provider shall not be required under the provisions of this paragraph to keep confidential any data already rightfully in the Provider's possession that is independently developed by the Provider outside the scope of the Agreement or is rightfully obtained from third parties.

No reports, information, inventions, improvements, discoveries, or data obtained, repaired, assembled, or developed by the Provider pursuant to this Agreement shall be released, published, or made available to any person (except to the State) in violation of any State or federal law.

Provider by acceptance of this Agreement is subject to all of the requirements of California Government Code Section 11019.9 and California Civil Code Sections 1798, et seq., regarding the collection, maintenance, and disclosure of personal and confidential information about individuals.

39. Provider Employee Misconduct

Agreements with Private Entities:

During the performance of this Agreement, it shall be the responsibility of the Provider whenever there is an allegation of employee misconduct associated with and directly impacting inmate and/or parolee rights, to immediately notify the CPHCS of the incident(s), to cause an investigation to be conducted, and to provide CPHCS with all relevant information pertaining to the incident(s). All relevant information includes, but is not limited to: a) investigative reports; b) access to inmates/parolees and the associated staff; c) access to employee personnel records; d) that information reasonably necessary to assure CPHCS that inmates and/or parolees are not or have not been deprived of any legal rights as required by law, regulation, policy and procedures; and e) written evidence that the Provider has taken such remedial action, in the event of employee misconduct with inmates and/or parolees, as will assure against a repetition of the incident(s). Notwithstanding the foregoing, and without waiving any obligation of the Provider, CPHCS retains the power to conduct an independent investigation of any incident(s). Furthermore, it is the responsibility of the Provider to include the foregoing terms within any and all subcontracts, requiring that subProvider(s) agree to the jurisdiction of CPHCS to conduct an investigation of their facility and staff, including review of subProvider employee personnel records, as a condition of the Agreement.

40. Hiring Considerations

If this Agreement is in excess of \$200,000, the Provider shall be required to give priority consideration in filling vacancies in positions funded by the Agreement to qualified recipients of aid under Welfare and Institutions Code, Section 11200 et seq.

41. Physician Ownership and Referral Act of 1993

In accordance with the Physician Ownership and Referral Act of 1993, Provider shall not refer any inmate/patient to any health care Provider or health-related facility if the Provider has a financial interest with that health care Provider or health-related facility.

Provider may make a referral to or request consultation from a sole source health care Provider or health-related facility in which financial interest is held if the Provider is located where there is no alternative Provider of service within either 25 miles or 40 minutes traveling time. The Provider shall disclose, in writing, to CPHCS the Provider's financial interest at the time of referral or request for consultation. In no event, will this prohibit inmates/patients from receiving emergency health care services.

42. Quality Assurance and Financial Audits/Reviews

- a. CPHCS reserves the right at its expense to make periodic quality of care audits and reviews for health care services rendered to inmates/patients. The purpose of these audits or reviews is to verify Provider's compliance with the performance provisions, scope of work, terms and conditions selected for review in this Agreement, and compliance with State laws and regulations and/or CPHCS policies and guidelines.
- b. CPHCS may make periodic audits at its expense regarding the quality of medical care rendered to inmates/patients as well as verify compliance with the terms and conditions pursuant to this Agreement and compliance with State laws and regulations, including adherence to CPHCS policies and guidelines. CPHCS may also audit and examine records and accounts which pertain, directly or indirectly, to Provider. Provider shall cooperate with such auditors; however, such audit shall not interfere with the administration of Provider nor with the delivery of health care services.
- c. Subject to applicable law, audit/review may be undertaken directly by CPHCS or by third parties engaged by CPHCS, including accountants, consultants and physicians. Provider shall cooperate fully with such auditors; however, such audit shall not interfere with the administration of Provider nor with the delivery of health care services.
- d. All adjustments, payments, and reimbursements determined by CPHCS or its representatives to be necessary by such audit/review shall be effected promptly by Provider upon issuance of a final audit report, except for portions of that report which are challenged or appealed by Provider. In the case of challenge or appeal, Provider shall effect the adjustment, payment or reimbursement immediately upon a settlement, or pursue remedy through the dispute resolution provisions set forth in this Agreement.
- e. Physicians Only: Provider does not waive its right under California Evidence Code Section 1157 et seq. The CPHCS recognizes that the records and proceedings of Provider's committees responsible for the evaluation and improvement of the quality of care are protected under Section 1157 of the Evidence Code; and, accordingly, CPHCS shall maintain the

confidentiality of all Provider peer review information to which it may gain access under this Agreement. The CPHCS shall not disclose any information obtained from Provider hereunder except as expressly approved by Provider or as required by law.

- f. Provider shall furnish, upon request by CPHCS, any inmate/patient records maintained by Provider or its medical and/or professional staff or any authorized officer, agent or employee, including, but not limited to, x-rays, lab results, and any medical committee reviews and recommendations related to a CDCR inmate.
- g. Findings shall be submitted to Provider, and CPHCS will establish a review date at which time expectations and time frames for correcting any deficiencies will be established. Failure by Provider to correct deficiencies, within agreed upon time frames, shall be reason for termination in accordance with the Termination of Agreement for Cause provision in this Exhibit.

43. Utilization Management (UM)

- a. CPHCS reserves the right to inspect, monitor, and perform utilization reviews prospectively, concurrently, or retrospectively, regarding the courses of medical treatment or hospitalization provided to CDCR's inmate/patients when performed by Provider and/or Provider's subcontract Providers. CPHCS may delegate this right to another State Agency or party. Such reviews shall be undertaken to determine whether the course of treatment or services had prior authorization, were medically necessary and performed in accordance with CPHCS's Medical Standards of Care.
- b. Provider agrees to make available to CPHCS for purposes of utilization review, an individual inmate/patient's medical record upon request from a CPHCS physician or UM nurse. Provider agrees that Provider's discharge protocols may not be applicable to all CPHCS cases and that discharge determinations shall be with the concurrence of the CPHCS attending physician.
- c. Provider acknowledges and agrees to inform its subcontract Providers that UM decisions shall not be deemed a substitute for the independent judgment of the treating physician or preclude treatment but shall be cause for denial of compensation for such treatment or hospitalization found to be inappropriate, whether identified through prospective, concurrent, or retrospective utilization review.
- d. Provider acknowledges and agrees that concurrent utilization management review shall not operate to prevent or delay the delivery of emergency medical treatment.

44. Utilization Management Appeals

Should the Provider disagree with the retrospective Utilization Management (UM) review of an invoice/service that results in a denial or disallowance of a billed service, the Provider agrees to pursue resolution by sequentially following the steps described below: Each party involved in an appeal shall act quickly so that the appeal may be resolved promptly. Every effort should be made to complete action within the time limits contained in the appeal procedure. However, with the mutual consent of the parties, the time limitation for any step may be extended. If there has been no mutually agreed upon time extension, failure to respond to the appeal within the specified time frames shall allow the appellant to file an appeal at the next level. If this occurs, the higher level must respond to the appeal and may not return it to a lower level.

a. **Informal Appeal**

Provider shall informally appeal a UM decision to the institution's Health Care Manager or his/her physician designee who rendered the decision in conjunction with the Utilization Management Nurse. The Health Care Manager will evaluate the appeal and respond within thirty (30) days.

b. **First Level Formal Appeal**

If the Provider disagrees with the UM decision after an informal appeal, a formal first level appeal shall be submitted to the Medical Authorization Review (MAR) Subcommittee at the appropriate CDCR institution. Provider must appeal to the MAR Subcommittee, in writing, within sixty (60) days of receipt of MAR's notice to uphold the denial or deferral of service. The MAR Subcommittee will evaluate the appeal and respond within sixty (60) days.

c. **Second Level Formal Appeal**

Providers may request a second level formal appeal if dissatisfied with the result of the first level appeal. Provider shall submit second level appeals within sixty (60) days, in writing, to CPHCS's Health Care Review Subcommittee at the address below. The Health Care Review Subcommittee will evaluate the appeal and respond within sixty (60) days.

Attention: Assistant Deputy Director
Clinical Policy and Programs Branch
Health Care Review Subcommittee
Division of Correctional Health Care Services
P.O. Box 942883
Sacramento, CA 94283-0001

45. Unusual Circumstances

a. **Major Disaster or Epidemic**

In the event of any major disaster or epidemic, as declared by the Governor of the State and affecting Provider's service area, or epidemic, as declared by the State Department of Health Services, or other appropriate entity, Provider shall render or attempt to arrange for the provision of services insofar as practical, according to their best judgment, within the limitations of such facilities and personnel as are then available, but neither Provider nor Provider's employees have any liability or obligation for delay or failure to provide any such services due to lack of available facilities or personnel if such lack is the result of such disaster or epidemic.

b. **Circumstances Beyond Provider's Control**

If due to circumstances not reasonable within the control of Provider, such as complete or partial destruction of facilities, war, riot, civil insurrection, or similar causes, the rendition of service provided hereunder is delayed or rendered impractical, then Provider has no liability or obligation under this Agreement for such delay or such failure to provide services.

46. Indemnification

a. Terms of Contract

Provider shall indemnify, defend, and save harmless the State, CPHCS, and CPHCS's officers, employees and agents, against any and all losses, liabilities, settlements, claims, demands, damages, or deficiencies (including interest) and expenses of any kind (including, but not limited to, attorneys' fees) arising out of or due to a breach of any representation or warranty, covenant, or agreement of the Provider contained in this Agreement. The State, CPHCS and CPHCS's officers, agents, and employees shall be responsible for their own acts and omissions.

b. Provision of Services

Provider shall be solely responsible for any and all losses, liabilities, settlements, claims, demands, damages, or deficiencies (Including Interest) and expenses of any kind (Including but not limited to, attorney's fees) arising out of Provider's, Sub-Providers, or their representatives negligent acts or omissions hereunder. The State, CPHCS and CPHCS's officers, agents, and employees shall be responsible for their own acts and omissions.