



CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES



REQUEST FOR PROPOSAL

ELECTRONIC MEDICAL RECORD PROJECT

12-009-ITS

April 20, 2012

The California Department of Corrections and Rehabilitation (CDCR), California Correctional Health Care Services (CCHCS) is requesting proposals for an Electronic Medical Record (EMR) solution using a multi-stage procurement approach. Contractor will work with CCHCS personnel and other stakeholders to design, install, configure, and implement a commercial off-the-shelf (COTS) EMR solution statewide.

All proposals must be signed by an authorized officer of the organization or firm who has legal and binding authority. Any unsigned proposal will be rejected. By submitting a proposal your firm agrees to the RFP's terms and conditions.

This RFP is not subject to provisions of the Public Contract Code (PCC) pertaining to bidding and awarding of contracts, but rather uses substitute procedures as authorized by the United States District Court for the Northern District of California (#C01-1351TEH). CCHCS reserves the right to modify or cancel, in whole or in part, this proposal at any time prior to contract award. Any RFP modification(s) and/or cancellation will be made by addendum. CCHCS reserves the right to negotiate services and related costs deemed necessary to meet the needs of the project.

Proposals are due **Monday, May 21, 2012, at 3:00 p.m.**, Pacific Time (PT). Bidder proposal and other required documents must be submitted in hard-copy and clearly labeled to the department contact noted below.

Department RFP Contact:

California Correctional Health Care Services
IT Acquisitions
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I. INTRODUCTION

In order to provide constitutionally adequate medical care to patient-inmates and to help determine the strategy for completing CCHCS' Clinical Data Repository (CDR) and pharmacy systems, a review of electronic health record options has determined that the best strategy moving forward is to procure an EMR software solution.¹

The purpose of this RFP is to solicit bids from system integrators and/or commercial-off-the-shelf (COTS) software vendors to design, install, configure, and implement an integrated EMR solution statewide.² CCHCS seeks to procure a software solution including license(s), hardware (as proposed by Bidder), implementation, and maintenance and support services that leverage CCHCS' existing infrastructure or is hosted offsite on vendor's hardware. The software should be configured to provide a core set of EMR features that meet CCHCS specific requirements (i.e., order entry, results review, nursing and physician documentation, registration/scheduling, etc.).

CCHCS will not consider proposals from bidders who offer Software as a Service (SaaS) solution(s), offer software that is available only as an open source solution, or custom software that must be developed from scratch (i.e., designed, coded, and tested specifically for CCHCS).

Bidder's proposal must provide a detailed analysis of CCHCS' mandatory requirements and cost(s) related to system acquisition of an EMR solution. The proposed solution must include mandatory core EMR functionality components for at least the following programs:

- Medical;
- Mental Health;³
- Nursing; and
- Pharmacy/Medication Administration.

If Bidder's solution does not include mandatory core EMR components for the above programs, Bidder's solution must integrate with other commercial software application(s). In addition to core functionality, interfaces with CCHCS software applications will be required (e.g., Laboratory Information System [Quest Care360], RIS/PACS [Fujifilm Medical Systems], Electronic Unit Health Record [eUHR/Documentum], etc.).

CCHCS recognizes that some information provided in this RFP may not be sufficient for bidders to initially submit a comprehensive solution and costing for an EMR. Thus, CCHCS is conducting a multi-stage procurement for bidders to submit their best proposal based on software functionality, system integration expertise and experience(s) with other states and/or projects of this kind, and cost(s).

¹System acquisition includes bill of materials for hardware and software required to operate the proposed EMR solution or, alternatively, for annual hardware hosting costs.

²COTS software includes commercially sold and distributed software or free software with commercial support as defined by federal acquisition regulation(s).

³Bidders proposed mental health core functionality is not required to be an independent module but, at minimum, must be a subset of proposed medical core functionality.



The multi-stage approach provides CCHCS with flexibility to implement the solution in a manner that may modify awardees' initial proposal of services, adjust timelines for design, installation, and/or configuration of EMR functionality/components specific to CCHCS requirements, and/or revise estimated Stage 2 costs. Bidder's proposed solution must not exceed CCHCS' total budget allotment of fifty-nine million dollars and no-cents (\$59,000,000.00).

Bidder's proposal must include fixed costs for Stage 1 deliverables and an estimation of cost(s) or quote(s) for Stage 2 requirements.

No costs associated with responding to this RFP may be charged to CCHCS for any reason.



II. BACKGROUND

The State of California's prison medical system was placed into Receivership by United States District Court Judge, Thelton E. Henderson, as a result of a 2001 class action lawsuit brought against the State of California over the quality of medical care in the State's prison system.⁴ The Court found that the medical care was a violation of the Eighth Amendment of the U.S. Constitution, which forbids cruel and unusual punishment of the incarcerated.

All activities of the Receivership have one common purpose: to create a collaborative environment where custody and health care staff improve upon the quality of medical services in California prisons in order to meet constitutional standards while reducing avoidable morbidity and mortality. The Receiver has adopted six goals that are necessary for the CDCR's health care program to rise to constitutionally acceptable and sustainable levels. The goals are: 1) ensure timely access to health care services; 2) establish a prison medical program addressing the full continuum of health care services; 3) recruit, train and retain a professional quality medical workforce; 4) implement a quality assurance and continuous improvement program; 5) establish medical support infrastructure; and 6) provide for necessary clinical, administrative, and housing facilities.

The above goals encompass key aspects of CCHCS' health care delivery system and the Receiver has initiated an organizational change to improve its medical and pharmacy programs. An overarching goal of the Receiver's Turnaround Plan of Action is for CCHCS to operate like an integrated health care organization especially in the area of medical records and management of patient-inmate care.⁵ By implementing an EMR solution throughout the State prison system, CCHCS will be able to deliver informed, evidence-based, medically competent patient-inmate care.

Proposed EMR solutions must leverage bidder's software to provide an electronic medical record that produces a complete view of patient-inmate data and is highly useable by clinicians in lieu of current paper-based and automated clinical systems.

II.1. Business Problem

In February 2006, the Receiver took control of the delivery of medical services for prisoners confined in California state prisons. The patient-inmate population within CDCR is complex and similar to a socio-economically challenged civilian population with high prevalence of substance abuse, mental illness, and chronic disease. The health care status of the typical patient-inmate is that of a chronologically older patient. Trauma is not uncommon and many incidents of substance/illicit drug use result in a high prevalence of hepatitis C, HIV/AIDS, and other communicable diseases.⁶

To address the problem(s), CCHCS' strategy is to enhance its CDR and pharmacy systems by procuring a software solution that brings patient-inmate data together

⁴ Plata v Brown

⁵ The Turnaround Plan of Action can be found at: http://www.cphcs.ca.gov/docs/resources/Turnaround_20100803.pdf

⁶ Additional institution demographic information may be found in Attachment 7 (CCHCS Map of Correctional Institutions).



into an integrated application, and if not possible, pursues robust data interfacing between existing CCHCS applications.

CCHCS plans to achieve the following objectives by acquiring this software solution:

- Reduce errors, redundant or unnecessary tests and medications;
- Improve patient safety and operations efficiency;
- Improve management of chronic care conditions and communications within health care units; and
- Compliance with State and federal health care regulations.

II.2. Multi-Stage Procurement

This procurement is being conducted under the substitute procedures for bidding and awarding of contracts as authorized by the United States District Court for the Northern District of California (#C01-1351TEH). Selection of the winning bidder(s) will be made using a multi-stage procurement process.

Initial Stage

CCHCS will award two (2) or more fixed-priced agreements to Bidders based on the selection process specified in Section II (Competition Process), Item D (Proposal Evaluation). Only those Bidders selected for contract award in the Initial Stage are eligible to participate in Stage 1.

CCHCS will award Stage 1 EMR solution agreement(s) to one (1) or more Initial Stage Contractors with the highest score, which is a result of:

1. Response to RFP requirements and scored evaluation criteria (i.e., Experience, Clinical, Technical);
2. Interview and on-site Bidder presentation demonstrating Certification Commission for Health Information Technology (CCHIT) test cases (i.e., Ambulatory, Long-Term Care, Behavioral Health and Emergency Department certifications);⁷
3. Out-of-the-box cost(s) for mandatory core EMR functionality; and
4. Fixed cost for Stage 1 deliverables.

Award of Stage 1 contract is subject to the Receiver's approval as specified in Section VII.6 (Selection of Contractor[s]).

Stage 1

CCHCS may enter into a Stage 2 EMR contract amendment with the Stage 1 Contractor that has the highest Proposal score as a result of acceptance of all Stage 1 deliverables to CCHCS' satisfaction. Only those Contractors selected for Stage 1 award are eligible to participate in Stage 2.

⁷ Only the top two (2) Bidders are required to interview. Additional Bidders may be interviewed and give product demonstration(s) at CCHCS' discretion.



Each Stage 1 Contractor may be reimbursed up to, but not to exceed, \$20,000.00 upon acceptance by CCHCS of all proposal requirements and Stage 1 deliverables.

Dependent upon Bidder's proposal, and not to exceed a four (4) month period from date of contract execution, each Stage 1 Contractor will perform all deliverables specified in Section V (Statement of Work), on a fixed-cost basis, and coordinate/communicate with CCHCS' Project Portfolio Manager and/or other stakeholders to deliver all of the following:

1. Conduct a Fit Gap analysis of CCHCS' medium-level business requirements and use cases to determine the best solution or "fit" that meets CCHCS' program needs (i.e., identify potential gaps between bidder software and CCHCS' medium-level requirements);
 - CCHCS will provide Contractor(s) with information and requirements in Stage 1.
2. Develop an EMR solution plan that includes, but is not limited to, business continuity, testing, and change management. Contractors solution plan will include all of the following according to CCHCS business requirements:
 - A maintenance and operation model;
 - An implementation plan that describes Bidder's overall work activities and order of events to complete EMR implementation;
 - Testing approach; and
 - A data migration and cleansing plan.
3. Validate and demonstrate solution architecture (i.e., prototype) for an EMR that is based on commercially available software and meets CCHCS' medium-level requirements.

Upon completion of Stage 1 deliverables, Contractors will be required to submit revised proposals for Stage 2 including, but not limited to, services approach, maintenance and operations, staffing, and costs not to exceed CCHCS' budget allotment in Section VI (Rate Sheet). Revised Stage 1 proposal(s) will be evaluated based on the selection process as specified in Section VIII (stage 1 and Stage 2 Evaluation).

Contract language and cost negotiations for Stage 2 amendment will be held with Contractors in Stage 1.

Stage 2

Upon approval of a Stage 2 contract amendment with the selected Stage 1 Contractor, agreements with the other Stage 1 Contractors shall be terminated for convenience. Award of Stage 2 amendment is subject to the Receiver's approval as specified in Section VIII.7 (Selection of Contractor).



The Stage 2 Contractor will be required to deliver all of the following within a twenty-four (24) month period:

1. Generate and deliver detailed requirements as directed by CCHCS;
2. Update solution plan;
3. Generate and implement Project Management Plan(s);
 - Provide an estimated list of all State resources required for both implementation and operations.
4. Perform as lead for organizational change management;
 - Perform process transition management that assists CCHCS in revising current policies and procedures to match the EMR solution.
5. Installation of EMR solution;
6. Configure and test initial installation based on detailed requirements;
7. Pilot and deploy software solution to all thirty-four (34) adult institutions;
8. Provide training and knowledge transfer to all applicable CCHCS staff; and
9. Transition solution to maintenance and operations.

The period of performance for Stage 2 will be based on Contractor's implementation plan as accepted by CCHCS and must include a schedule for installation, configuration, customization (if warranted), deployment, support and ongoing maintenance of the software solution.

It is expected that Bidders will review Stage 2 requirements to clearly understand Contractor roles and responsibilities prior to responding to this section of the Proposal. In addition, revised Stage 2 proposals must reflect knowledge learned during Stage 1 analysis and discussions.

II.3. Project Manager and Stakeholders

A. Executive Stakeholders

	IT Services Division	Allied Health Services
Name	Liana Bailey-Crimmins	Brenda Epperly
Title	Chief Information Officer	Director, Allied Health Services Division

B. Project Manager

	IT Services Division	Allied Health Services
Name	Amy Zhou	Rick Keyes
Title	State Project Manager	Business Project Manager



II.4. RFP Contact Person

Administrative Support Division IT Acquisitions
Alexander Thomson
501 J Street P.O. Box 4038 Sacramento, CA 95812-4038
(916) 322-0529 Alexander.thomson@cdcr.ca.gov

Oral communications with CCHCS officers and employees concerning this RFP shall not be binding on CCHCS and shall in no way excuse bidders of any obligations set forth in this RFP.

II.5. Key Action Dates

	Action	Date/Time⁸
1.	Release of RFP 12-009-ITS	04/20/2012
2.	Last day to submit first (1 st) round of questions	04/26/2012 By 3:00 p.m., Pacific Time (PT)
3.	Last day to submit second (2 nd) round of questions	05/04/2012 By 3:00 p.m., PT
4.	Proposal Due Date	05/21/2012 – by 3:00 p.m., PT
5.	Proposal Evaluation ⁹	05/21/2012 through 06/18/2012
7.	Contract Execution	(on or before) 06/30/2012
8.	Stage 1 Performance	06/30/2012 through 10/30/2012
9.	Submission of Revised Stage 2 Proposals	11/30/2012
10.	Evaluation of Revised Proposals	12/01/2012 through 12/15/2012
11.	Stage 2 Contract Amendment	(on or before) 01/15/2013

⁸ Dates are subject to change.

⁹ Time period includes bidder interview(s), product demonstration(s), and reference check(s).



II.6. Bidders Library

The Bidders Library contains reference materials and other documents supporting this RFP. All Bidders are advised to review the information in the library located at http://www.cphcs.ca.gov/project_rfp.aspx.¹⁰

The Bidders Library currently contains all of the following reference material:

1. Rate Sheet (Attachment 1);
2. Model Contract (Attachment 2);
3. CCHCS Special Provisions (Attachment 3);
4. Correctional Care Model Current State (Attachment 4);
5. CCHCS Application Assessment (Attachment 5);
6. Technical Infrastructure Assessment (Attachment 6);
7. CCHCS Correctional Infrastructure (Attachment 7);
8. EMR Technical Evaluation Criteria (Attachment 8);
9. EMR Clinical Evaluation Criteria (Attachment 9);
10. General Terms (Attachment 10); and
11. Glossary (Attachment 11).

¹⁰ Please recognize that the Bidders Library may be updated at any time during the RFP process and it is bidder's responsibility to check for updates.



III. COMPETITION PROCESS

III.1. RFP Process

A. General:

The procurement process for this solicitation includes a Question and Answer period, Proposal Submission, Product Demonstration (including interviews to at least the top two [2] Bidders), Stage 1 Contract Award, Stage 2 Proposal Evaluations, Negotiation Process, and Contract Amendment.

B. Question and Answer Period:

A question and answer period will be conducted to discuss the content of this RFP, procurement process(es), etc., for an EMR solution. Written questions received by electronic mail (e-mail) or U.S. postal service prior to the deadline indicated in the Key Action Date(s) will be addressed and posted on CCHCS' webpage without disclosing the source of inquiry.

A Bidder who desires clarification or further information on the RFP, but whose question(s) relate to the proprietary aspect of that Bidder's proposal, may submit such questions in the same manner as above, but must be marked "Confidential". The Bidder must also explain why any questions are sensitive in nature. If CCHCS concurs that disclosure of the question or answer would expose the proprietary nature of Bidder's proposal, the question will be answered and both question and answer will be kept in confidence. If CCHCS does not concur with the proprietary aspect of the question, the question will not be answered in this manner and Bidder will be notified.

At CCHCS' sole discretion, questions may be paraphrased for clarity purposes.

C. Bidders Conference:

CCHCS will not convene a Bidders Conference for this RFP. Bidders are encouraged however to utilize the Question and Answer Period for clarification and/or additional information on the RFP's content.

D. Addenda:

CCHCS may modify the RFP prior to proposal due date by issuance of addendum. Addenda will be numbered consecutively and posted on CCHCS' web site at http://www.cphcs.ca.gov/project_rfp.aspx.

E. Bidder's Proposal:

Bidder's proposal must be complete in accordance with Section III.2 (Response Requirements) including, but not limited to, all cost information and required signatures.

Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy RFP requirements. Expensive bindings, colored displays, promotional materials, etc., are not necessary or



desired. Emphasis should be placed on conformance to RFP instructions, responsiveness to requirements, and on completeness and clarity of content.

F. Evaluation:

Award of Stage 1 contracts will be based on Section VII (Stage 1 and Stage 2 Evaluation). Product demonstrations (i.e., interviews) will be required of at least the top two (2) scoring Bidders. Bidder's proposed personnel (i.e., Key Staff) or Subject Matter Experts (SMEs) must be available to participate in the product demonstration. Demonstrations will be conducted during the proposal evaluation time period as specified in Key Action Date, item #5.

- Bidders will present an out-of-the-box functionality demonstration for their proposed EMR software using CCHIT test cases (i.e., Ambulatory, Long-Term Care, Behavioral Health, and Emergency Department).

G. Award of Contract And Amendment

The award of Stage 1 contracts will be to the highest scoring two (2) or more Bidders as specified in Section II.2 (Multi-stage Procurement) and Section VII (Stage 1 and Stage 2 Evaluation).

Recommendation for award of Stage 2 contract amendment will be with the Contractor whose revised Stage 2 proposal complies with all RFP requirements and any addenda thereto, and is determined to be the best value to the State. Award of Stage 2 amendment is subject to the Receiver's approval as specified in Section VIII.7 (Selection of Contractor).

III.2. Response Requirements

A. Administrative Requirements

Proposals must include all of the following administrative requirements to be considered for Stage 1 award:

1. Cover letter signed by an authorized officer of the company or firm who has legal and binding authority. The cover letter shall include, but not be limited to, all of the following:
 - a. Full legal name of Bidder's organization or firm, mailing address, telephone and facsimile numbers;
 - b. Name, telephone number, and e-mail address of Bidder's contact person;
 - c. Submission date of Proposal; and
 - d. Original signature(s) in blue ink to allow original (i.e., Master Copy) to be distinguished from copies.

2. Payee Data Record (STD 204) - (Attachment A);

Bidders must submit a fully executed Payee Data Record with their proposal.



3. General Liability Insurance Certificate;

Bidder must provide CCHCS with a Certificate of Insurance acceptable to CCHCS showing that there is liability insurance currently in effect for Bidder of not less than \$1,000,000, per occurrence, for bodily injury and property damage liability combined.

The Certificate of Insurance must include the following provisions:

- a. The insurer will not cancel the insured's coverage without 30 days prior written notice to the State; and
- b. The State of California shall be included as additional insured after contract award.

If the insurer provides notice of intent to cancel the insured's coverage, prior to the effective date of cancellation, Contractor shall secure a Certificate of Insurance from an alternate insurer acceptable to CCHCS.

4. Worker's Compensation Liability Insurance Certificate;

Bidder shall provide CCHCS with a Certificate of Insurance in the amount of at least one-million dollars (\$1,000,000.00) showing that there is workers' compensation insurance for its employees who will be engaged in the performance of the requested services. The Certificate of Insurance must include the provision that insurer will not cancel the insured's coverage without 30 days prior written notice to the State.¹¹

If the insurer provides notice of intent to cancel the insured's coverage, prior to the effective date of cancellation, Contractor shall secure a Certificate of Insurance from an alternate insurer acceptable to CCHCS.

5. Secretary of State Certification;

All corporations, limited liability corporations (LLCs), and limited partnerships (LPs) must be registered and in active status with the California Secretary of State (SOS) to be awarded a contract. Bidders must submit a copy of the SOS certification with their proposal.

6. Health Care Industry Certification(s);

Bidders shall provide copies of their Certification Commission for Health Information Technology (CCHIT) certification(s) including Ambulatory, Long-Term Care, Behavioral Health, and Emergency Department CCHIT certifications, and any other medical industry certification.

- Bidders must also provide results of Bidder's CCHIT usability score, if any.

7. Bidder Declaration Form (GSPD-05-105);

Bidders must complete the Bidder Declaration and include it with proposal. When completing the declaration, Bidders must identify all subcontractors proposed for participation in the contract. Bidders

¹¹"Days" means calendar days unless otherwise specified.



awarded a contract are contractually obligated to use the subcontractors for the project unless CCHCS agrees to a substitution. The GSPD-05-105 can be found at:

<http://www.documents.dgs.ca.gov/pd/poliproc/MASTER-BidDeclar08-09.pdf#search=gspd%2005-105&view=FitH&pagemode=none>

8. Description of Bidder's Services Approach;¹²

Bidders shall provide a detailed description of their approach for completing all deliverables specified in Section V (Statement of Work) including, but not limited to, the roles, functions, and responsibilities of personnel and subcontractors:

Bidder's services approach must:

- a. Describe example(s) of an EMR design, installation/configuration, and implementation that demonstrates Bidder's knowledge, skills, and abilities to successfully deploy an EMR solution;
 - Bidders must submit documents supporting their example(s).
- b. Specify all goods (i.e. software and hardware) and services (e.g., design, installation, configuration, etc.) available for project;
- c. Identify tasks, resources, due dates and deliverables for a successful EMR solution (e.g., personnel, classification levels, skill sets, timeframes, etc.);
- d. Data migration and cleansing approach;
- e. Specify estimated hardware and infrastructure requirements for successful implementation within CCHCS' correctional environment;
- f. Include a sample of EMR work performed for a health care organization equivalent in size and complexity to CCHCS; and
- g. Specify milestones and key deliverables for Stage 2 implementation including, but not limited to, workflow and system configuration design, system and workflow testing, deployment, technical support, and maintenance and operations.

9. Description of Bidder's Expertise and Experience;¹³

Bidders shall provide a detailed description of their expertise and experience designing, installing, configuring, implementing, and deploying an EMR solution that includes, but is not limited to, all of the following:

- a. Three (3) customer references for engagement(s) similar in scope to Section V (Statement of Work);¹⁴

¹² Bidder's approach information will be used during Stage 1 evaluations as specified in Sections VII.4 (Proposal Evaluation Criteria).

¹³ Bidder's expertise and experience information will be used during Stage 1 evaluations as specified in Sections VII.4 (Proposal Evaluation Criteria).

¹⁴ Customer references will be used to verify information provided by Bidder for selection purposes.



- b. Include a brief description of a similar project and Bidder's role in the design, installation/configuration, implementation, and/or deployment of the solution; and
 - Include all cost overrides for project, schedule, and/or any other resources with an explanation for each occurrence, and what risk mitigation techniques Bidder has put in place to ensure future projects will not overrun.
- c. Provide actual uptime requirements for past implementation(s) of a software solution in a correctional environment and/or for one (1) or more hospital environments.
- d. Provide a description of dental EMR interface experience, if applicable.

10. Completed Rate Sheet (Attachment 1);¹⁵

Bidders shall provide all of the following:

- a. A full description of fixed costs for Stage 1;
- b. An estimate of all project resources (e.g., labor and operating expenses and equipment) and costs for Stage 2;
 - Specify out-of-the-box costs including an estimate of all end user licensing fees to meet CCHCS' minimum mandatory requirements (i.e., vendor license fees, third-party software, underlying database expenses, modules, and other software and/or interface costs).
 - Specify training costs and any other operational costs (e.g., travel) for Stage 2.
 - Bidders shall quote hourly rates for all consultant classifications required for Stage 2 services.
- c. An estimate of ongoing costs and resources for maintenance and operations; and
 - Bidders shall provide a quote for ongoing license costs including module(s), if any.
- d. Any other cost(s) for optional goods and/or services related to procurement of an EMR software solution.

An example of Bidder's proposed Rate Sheet (Attachment 1) has been included within RFP and may be modified to correspond to Bidder's proposal.

B. Proposal Format

Bidders must submit one (1) master copy proposal, five (5) proposal copies, and one (1) compact disk (CD) containing all proposal documents to the address of the departmental RFP contact noted on page 1. All pages of Bidder's proposal received on or before the deadline set forth in the Key Action

¹⁵ Bidder's cost information will be used during Stage 1 evaluations as specified in Sections VII.4 (Proposal Evaluation Criteria).



Dates will be considered for Stage 1 award. Proposals received after the deadline shall be deemed non-responsive. CCHCS is not responsible for any loss and/or failure to receive a Bidder's proposal. CCHCS assumes no responsibility if the entire proposal is not received prior to proposal deadline.

Bidder's Proposal must conform to all of the following format requirements. If format requirements are not met, Bidder's proposal may be deemed non-responsive:

1. All soft copy (i.e., CD) files must be either Microsoft Office Suite (e.g., Word, Excel, Project, PowerPoint, etc.), version 2003 or later, or Adobe PDF compatible;
 - All proposal text must be at least 12 points, and information presented within figures and tables must be at least 8 points.
2. All pages must be printable on standard 8.5" x 11" paper, except charts, diagrams, spreadsheets, etc., which must fit within the 8.5" x 14" format;
 - Single-sided pages are preferred.
3. Sequentially numbered pages (either continuous or by section) is permitted, excluding project schedule;
 - Page numbers must be located in the same page position throughout Bidder's proposal.
 - Figures, tables, charts, diagrams, etc., must be assigned index numbers and must be referenced by these numbers in the proposal's text and Table of Contents.
4. Proposer's business name shall be in the header or footer of each page;
5. Bidder's Proposal shall be bound in a three-ring binder with removable pages;
6. Bidder's Proposal shall sequentially label exhibits (e.g., tables, graphs and graphics);
7. Bidder's Proposal shall be clearly legible; and
8. All items specified in Section III.2.A (Administrative Requirements) must be submitted by the time and due date(s) in Section II.5 (Key Action Dates).

III.3. Mandatory Requirements

Bidders shall meet all of the following mandatory requirements to be considered for contract award:

A. Minimum Mandatory **Bidder** Requirements (Pass/Fail)

Bidders shall meet all of the following minimum Bidder requirements to be considered for award:

1. Three (3) years of continuous experience as an EMR system integrator and/or Commercial Off the Shelf (COTS) vendor (i.e., not reseller) providing EMR software; and



- CCHCS will not consider bidders who offer Software as a Service (SaaS) solution(s) or software that must be developed from scratch (i.e., designed, developed, and tested specifically for CCHCS);
 - CCHCS will not consider bidders who have never interfaced their EMR solutions with a dental EMR and/or included dental EMR functionality within their core solution; and
 - CCHCS will consider licensed software solutions that are hosted on a vendor's hardware infrastructure.
2. Independently-audited annual financial statements prepared by a Certified Public Account (CPA) in accordance with generally accepted accounting principles (GAAP), or U.S. Securities and Exchange Commission (SEC) Form 10-K.
- CCHCS will not enter into contract with any bidder who cannot demonstrate, to the sole satisfaction of CCHCS, its financial viability, credit worthiness, and depth of financial resources to ensure completion of all contractual obligations.

B. Minimum Mandatory Business Requirements (Pass/Fail)

Bidders' proposed software must meet the following minimum business requirements to be considered for contract award:

1. Provide clinical documentation that supports CCHCS' clinical diversity, size (i.e., greater than 120,000 patient-inmates), and complexity with emphasis on the following:
 - a. The software must have been implemented at least in one (1) health care operation spanning medical, mental health, and pharmacy for an organization of similar size and complexity to CCHCS; and
 - b. The software must be capable of handling more than 3,000 simultaneous end users.
2. Provide a comprehensive pharmacy information management system that includes, but is not limited to, all of the following:
 - a. Clinical order entry and decision support;
 - b. Medication dispensing management;
 - c. Medication administration documentation; and
 - d. Continuity from clinician order through medication administration for all CCHCS correctional settings.
3. The software solution must support healthcare industry standards as follows:
 - a. Remote patient-inmate clinical data accessibility for external and/or community health care providers, including support for Health Information Exchange (HIE) standards and protocols (e.g., HL7, DICOM, ICD-10, etc.);
 - b. Compliant with HITECH Act requirements; and



- c. Certified to meet current Certification Commission for Health Information Technology (CCHIT) requirements including Ambulatory, Long-Term Care, Behavioral Health and Emergency Department certifications.
- C. Minimum Mandatory **Technical** Requirements (Pass/Fail)
1. Operating Environment
 - a. The software solution must function cohesively with CCHCS' existing infrastructure and clinical application environment (i.e., either interface existing systems or operate in parallel without interference).
 2. Data Access
 - a. The software must support use of industry standard protocols to access EMR data independent of the EMR application (e.g. SQL, ODBC, or JDBC).
 - b. Data exportable to Microsoft compatible format(s).
 - c. The solution must be compliant with all CCHCS security policies.
 - d. Data stored with tamper proof logs of activity related to health care records.
 3. Integration Architecture
 - a. The software solution must support use of a Service Oriented Architecture (SOA) approach.
 - b. The software solution must meet all applicable Institute of Electrical and Electronics Engineers (IEEE) standards.
 4. Development Architecture
 - a. The software solution must implement customizations and configurations in a non-proprietary, industry standard that is generally available in the open market.
 5. Operations Architecture
 - a. The software must support integration with market leader system management solution(s) through a native integration support (i.e. use of adapters or agents) and/or use of industry protocols (e.g. Simple Network Management Protocol [SNMP]) to provide operational monitoring and alert capabilities, including performance and capacity planning metrics and reports.
 6. Laboratory System Interface
 - a. Include lab and diagnostic imaging results displayable, searchable, and filterable in a variety of views and formats.



IV. RFP DOCUMENTS AND CONDITIONS

This RFP includes an explanation of the State's requirements, instructions that prescribe all mandatory content for Bidder's proposals, and a sample model contract for execution between CCHCS and the successful Bidder(s).

If a Bidder discovers any ambiguity, conflict, discrepancy, omission, or other error(s) in this RFP, Bidder should notify the departmental contact indicated on page 1. If this RFP contains an error known to Bidder, or an error that reasonably should have been known, Bidder shall bid at its own risk. If Bidder fails to notify the State of the error prior to date for submission of bids and is awarded a contract, Bidder shall not be entitled to additional compensation or time extension by reason of the error or its ensuing correction.

This Request for Proposal (RFP), Bidders proposal, the General Provisions, and applicable IT provisions (e.g., special provisions, software license, etc.) will be made part of the ensuing agreement(s) and contract file(s).

This RFP uses the substitute procedures for bidding and awarding of contracts as authorized by the United States District Court for the Northern District of California (#C01-1351TEH). CCHCS reserves the right to modify or cancel, in whole or in part, this RFP at any time prior to contract award. Any RFP modification(s) and/or cancellation will be made by written addendum.

IV.1. Bidder's Guidelines

Bidder's proposal is an irrevocable offer for twelve (12) months following the date for Stage 1 contract award as specified in Section II.5 (Key Action Dates).

In addition to Section III.2.A (Administrative Requirements) above, Bidder's proposed staff will be required to complete the following documents prior to Stage 1 contract award.

Do not submit the following with your proposal:

- a. Contractor Confidentiality Statement (Attachment B);

The Political Reform Act of 1974 (Government Code Sections 81000-91015) requires consultants to file a Contractor Confidentiality Statement certifying no personal or financial interest with the EMR project, and agreeing to keep all information concerning the project confidential.

- b. Non-Disclosure Agreement (Attachment C); and
- c. Statement of Economic Interests (Form 700) - (Attachment D).



IV.2. Proprietary Material

Any information contained in any response to this RFP that bidder believes is proprietary must be clearly designated as such. If a request is made to view any proposal after execution of the contract amendment for Stage 2, CCHCS will comply with said request pursuant to the California Public Records Act (Government Code Section 6250 et seq). To the extent any information contained in bidder's proposal is marked proprietary; such information will not be made available to requestor until the affected bidder has been given written notice and an opportunity to seek a Court Order.

Bidder should clearly identify any materials that constitute valuable formulae, designs, drawings, and research data or any materials otherwise claimed to be confidential trade secrets, along with an applicable statutory citation supporting a claim for confidentiality. Failure to label materials as proprietary, or failure to secure a Court Order within ten (10) calendar days after notice has been given to bidder of a request for access to their RFP materials, may be deemed a waiver by bidder of any claim that such materials are, in fact, confidential. CCHCS' sole responsibility is limited to maintaining proposals in a secure area and to notify any respondent of any request(s) for disclosure as soon as practicable from the receipt date of request.

Proposals are public upon opening; however, the contents of all Proposals, correspondence(s), agenda, memoranda, working papers, or any other medium that discloses any aspect of a Bidder's Proposal shall be held in confidence until execution of contract amendment for Stage 2. Bidders should be aware that marking a document "CONFIDENTIAL" or "PROPRIETARY" in a final bid will not keep that document from being released after execution of contract amendment for Stage 2, as part of the public record, unless a court of competent jurisdiction has ordered the State not to release the document. The content of all working papers and discussions relating to Bidder's proposal shall be held in confidence until execution of Stage 2 contract amendment.

IV.3. Contractual Information

A. Errors in the Proposal

Any error in the proposal may result in rejection of that bid; however, CCHCS may at its sole option retain the Proposal and make certain corrections. To determine if a correction will be made, CCHCS will consider the Proposal's conformance to the required format and content, and any unusual complexity required by this RFP.

- If Bidder's intent is clearly established within their submitted proposal, CCHCS may at its sole option correct an error based on that intent;
- CCHCS may at its sole option correct obvious clerical errors; and
- CCHCS may at its sole option correct discrepancies and/or mathematical errors based on Bidder's intent.



B. Contract Form

Attachment 2 (Model Contract) includes all proposed model contract language for the forthcoming EMR agreements.

IV.4. Bonds

No bond or Letter of Bondability is required for Stage 1 award. Contractor(s) must provide, at no cost to the State, a Letter of Bondability for thirty (30) percent of the total Stage 2 proposed cost prior to evaluation of Stage 2 contract amendment. The Letter of Bondability shall be from a surety insurer and shall state that, if the contract with the Bidder is amended to include Stage 2, the surety will execute a faithful performance bond within 21 calendar days of the date of Stage 2 contract amendment. The surety bond shall be in effect for five years.

The Letter of Bondability shall remain in effect until Stage 2 contract amendment, or for one-hundred and eighty (180) days after the completion of Stage 1 services, whichever occurs first. The term of the bond shall be the Contract performance period.

IV.5. Attachments

Rate Sheet (Attachment 1);
Model Contract (Attachment 2);
CCHCS Special Provisions (Attachment 3);
Correctional Care Model Current State (Attachment 4);
CCHCS Application Assessment (Attachment 5);
Technical Infrastructure Assessment (Attachment 6);
CCHCS Correctional Infrastructure (Attachment 7);
EMR Technical Evaluation Criteria (Attachment 8);
EMR Clinical Evaluation Criteria (Attachment 9);
General Provisions (Attachment 10); and
Glossary (Attachment 11).

Attachment A Payee Data Record (STD 204)
Attachment B Contractor Confidentiality Statement
Attachment C Non-Disclosure Agreement
Attachment D Statement of Economic Interests (Form 700)



V. STATEMENT OF WORK

V.1. Scope of Services – Project Overview

In order to provide constitutionally adequate medical care to patient-inmates and to help determine the strategy for completing CCHCS' CDR and pharmacy systems, a review of electronic health record options has determined that the best strategy moving forward is to procure an EMR software solution.¹⁶

CCHCS seeks to procure a software solution including license(s), hardware (as proposed by Bidder), implementation, and maintenance and support services that leverage CCHCS' existing infrastructure or is hosted offsite on vendor's hardware. The software should be configured to provide a core set of EMR features that meet CCHCS specific requirements (i.e., order entry, results review, nursing and physician documentation, registration/scheduling, etc.).

CCHCS will not consider proposals from bidders who offer Software as a Service (SaaS) solution(s) or software that must be developed from scratch (i.e., designed, developed, and tested specifically for CCHCS).

CCHCS supports all health care related services for CDCR patient-inmates including, but not limited to, all of the following programs:

- Medical;
- Mental Health;
- Dental;
- Nursing;
- Dietary;
- Rehabilitation;
- Laboratory;
- Pharmacy;
- Radiology;
- Health Records; and
- Registration/Scheduling.

While primary outpatient care is most prevalent at CCHCS, there is also unit-based care provided throughout the institutions. Bidders proposed EMR solution must be versatile for all types of clinics and will be used by clinicians throughout the State prison system, including Correctional Treatment Centers (CTCs) and Outpatient Housing Units (OHUs).

In addition to unit-based care, CCHCS provides health care services via telemedicine for patient-inmates. The EMR solution must be remotely accessible

¹⁶ System acquisition includes bill of materials for hardware and software required to operate the proposed EMR solution or, alternatively, for annual hardware hosting costs.



in accordance with HIPAA regulations supporting both telemedicine and telepsychiatry.

While EMR billing functions are out of scope the health care encounter data, including diagnostic and procedure codes and performance indexes, will need to be tracked and reported.

CCHCS plans its first implementation of an EMR solution to have "out of the box" core EMR functionality (i.e., order entry, results review, nursing and physician documentation, registration/scheduling, etc.).

V.2. Current CCHCS IT Infrastructure

CCHCS enterprise systems are installed at the Tier 3 Federated Data Center (FDC) located at the California Technology Agency, Office of Technology Services (OTech) in Rancho Cordova, CA.

CCHCS currently uses IBM AIX platforms using the Oracle database and Microsoft technologies. These technologies are currently supported by CCHCS' Information Technology Services Division (ITRSD). CCHCS requests that Bidder's proposed solution(s) describe how to either utilize the current infrastructure or propose how the Bidder would host alternative infrastructure solutions. For alternative infrastructure hosting proposals, Bidder's proposal must include any additional infrastructure cost that may be required and/or infrastructure buy-back options.¹⁷

V.3. Current CCHCS Clinical Applications

CCHCS has two distinct sets of application infrastructure. The majority of CCHCS systems currently are custom built using a MS development platform (i.e., .NET, Access, SharePoint, and CRM), and run on MS Windows and SQL servers. CCHCS' ITSD provides maintenance support to these systems.

CCHCS' health care IT systems are automated systems for medical, mental health, dental, pharmacy, laboratory, radiology, nursing, health records, and registration/scheduling functionality.¹⁸

V.4. Stage 1 Deliverables

Stage 1 Contractors will be required to submit revised proposals for Stage 2 services, including cost within CCHCS' allotted budget. Revised proposal(s) will be evaluated based on the selection process specified in Section VIII (Stage 1 and Stage 2 Evaluation).

The first stage of the EMR procurement is for awardees to design an EMR solution for second stage EMR installation/configuration and implementation.

¹⁷ Additional hardware infrastructure specifications may be found in the Bidder's Library, Technical Infrastructure Assessment (Attachment 6).

¹⁸ Additional detail on clinical applications may be found in the Bidder's Library, CCHCS Application Assessment (Attachment 5).



Over a four (4) month period, each Stage 1 Contractor will perform all of the following deliverables, on a fixed-cost basis, and coordinate/communicate with CCHCS' Project Manager and/or other stakeholders:

A. Deliverable 1 – Fit Gap Analysis;

Stage 1 Contractors and/or their subcontractor(s) shall work with CCHCS or CCHCS' contractor designated to gather all EMR medium-level requirements to ensure all applicable requirements are defined.

Concurrent to medium-level requirements gathering performed by CCHCS or CCHCS' contractor, each Stage 1 Contractor will conduct a detailed analysis of CCHCS' EMR requirements to determine the best solution or "fit" (i.e., identify potential gaps between bidder software and CCHCS' medium-level requirements).

The analysis shall identify, analyze, and document how Contractor's proposed EMR solution will meet CCHCS' requirements with:

1. Out-of-the-box functionality; and/or
2. Third-party component(s);

Any requirement that cannot be met by Contractor's proposed EMR software (either with or without supporting third-party software) will also be documented.

If any third-party software is proposed, Contractor's analysis shall also specify how each third-party product will:

1. Integrate into the EMR solution (i.e., into a module of Contractor's software, via customization of the EMR, as a stand-alone application, or into CCHCS' IT system[s]);
2. Be updated; and
3. Be managed.

Contractors will use the fit gap analysis to determine configuration of core-suite features (e.g., stay-based care documentation, flowsheets, level of care management, discharge management, order entry, nursing and physician documentation, results review, encounter-oriented documentation, and reminders, alerts, recalls, etc.) for Deliverable 3 (Validate and Demonstrate Solution Prototype).

SPECIFIC DELIVERABLE(S):

Fit Gap Analysis.

ACCEPTANCE CRITERIA:

Approval of deliverable by CCHCS within four (4) weeks of Stage 1 contract execution.



B. Deliverable 2 – EMR Solution Plan.

Contractors shall develop a detailed EMR solution plan that will be part of evaluation for Stage 2 award. The solution plan must be written according to CCHCS' project management standards and policies and describe performance of all Stage 2 deliverables including, but not limited to, all of the following:

1. Proposed staffing plan and resumes including subcontractors (i.e., System Integrator);
2. All project tasks for each Stage 2 deliverable including task dependencies and other details;
3. A Bill of Materials (BoM) for all required solution hardware and/or software including a cost quote;¹⁹
4. CCHCS approved project management plan;
5. Project schedule for all Stage 2 deliverables;
6. Testing approach;
7. Data migration plan;
8. Change management plan²⁰;
9. Knowledge transfer and training plan;
10. Maintenance and operations model;
11. All implementation costs, including related costs (e.g., initial training, travel, system certifications, etc.); and
12. Specify ongoing costs (e.g., software maintenance, Contractor supported services, hardware maintenance, device repair and replacement, data storage, data center operations, ongoing support resources, etc.).

SPECIFIC DELIVERABLE(S):

Written implementation plan

ACCEPTANCE CRITERIA:

Approval of deliverable by CCHCS within four (8) weeks of Deliverable 1 acceptance.

C. Deliverable 3 – Validate and Demonstrate Solution; and

Based on fit gap analysis, Contractors shall demonstrate a fully-functional EMR solution "proof of concept", which shall validate that Contractor's solution meets CCHCS medium-level business requirements and use cases.

¹⁹ CCHCS may choose to purchase BoM items either directly from Stage 2 Contractor, or independently via internal procurement methods.

²⁰ Change management plan must account for use of a current EMR system at Pelican Bay (i.e., MIPMS), and potential difficulty to convert.



The "proof of concept" shall demonstrate, at minimum, all of the following:

1. Core-suite functionality (e.g., stay-based care documentation, flowsheets, level of care management, discharge management, order entry, nursing and physician documentation, results review, encounter-oriented documentation, and reminders, alerts, recalls, etc.);
2. CCHCS provided use cases and workflows.

SPECIFIC DELIVERABLE(S):

CCHCS Proof of Concept, including demonstration.

ACCEPTANCE CRITERIA:

Approval of deliverable by CCHCS within four (4) weeks of Deliverable 2 acceptance.

V.5. Stage 2 Deliverables

Upon award of Stage 2 contract amendment, Contractor shall deliver all of the following within a twenty-four (24) month period:

A. Deliverable 1 – EMR Detailed Requirements;

Contractor shall generate and deliver detailed requirements specific to their EMR solution, as approved by CCHCS. Detailed requirements shall include, but not be limited to, use cases, test cases, and workflows.

B. Deliverable 2 – Update Solution Plan;

Contractor shall revise their solution plan, including all sub-plans (e.g., Configuration Plan, Data Migration Model, etc.), as approved by CCHCS.

C. Deliverable 3 – Generate and Implement Project Management Plan(s);

Contractor shall generate and implement a Project Management Plan, including all sub-plans (e.g., Change Management Plan, etc.), according to CCHCS project management standards.

Contractors Project Management Plan shall include an estimated list of all State resources required for both successful EMR implementation and ongoing maintenance and operations, as approved by CCHCS.

D. Deliverable 4 – Perform as Lead for Organizational Change Management;

Contractor shall perform as lead CCHCS' organizational change management efforts for successful adoption of the EMR solution at all thirty-four (34) adult-inmate institutions.

As the change management lead, Contractor shall perform process transition management that assists CCHCS in revising current policies and procedures to match the EMR solution.



E. Deliverable 5 –Installation of EMR Solution;

Contractor shall complete development and installation of all software, databases, and systems that shall comprise CCHCS' EMR solution according to CCHCS approved architecture.

Installation shall include all core EMR software, any additional interfaces, updates, patches, and/or third-party software. Installation shall be performed for a minimum of three (3) operating environments including:

1. Development;
2. Test; and
3. Production.

F. Deliverable 6 – Configuration and Testing;

Contractor shall configure the initial installation to be fully operational according to detailed requirements and test to confirm complete functionality.

G. Deliverable 7 – Pilot and Deployment;

Contractor shall pilot and deploy the solution to all thirty-four adult institutions and conduct final solution validation.

H. Deliverable 8 – Implementation and Change Management; and

Contractor shall conduct training; resolve all issues resulting from any changes, and transfer knowledge for complete utilization of its EMR solution by all applicable CCHCS staff.

Contractors shall provide all required technical, training, process management, planning, and reporting documentation including, but not limited to, all of the following:

1. Manuals;
2. Source code;
3. System models, diagrams, and descriptions;
4. Process management plans;
5. Knowledge transfer and training plans;
6. Training course outlines and materials;
7. Business continuity plans;
8. Test plan, scripts and reporting templates/mechanisms;
9. Performance and capacity plan;
10. Operational and disaster recovery plan;
11. Support process and transition plan;
12. System security plan;
13. Quality management plan;
14. Administration procedures;



15. Support scripts and decision trees; and
16. Maintenance and operations (M&O) plan.

I. Deliverable 9 – Transition to Maintenance and Operations.

Contractor shall provide a final EMR implementation report and render assistance to transition the solution to CCHCS maintenance and operations.

V.6. Medium-Level Requirements

The following requirements are desirable and will not be scored during Initial Stage evaluation of Proposals, but should be considered when Bidders generate their proposals.

At CCHCS' sole discretion, the following may be revised during Stage 1 performance and may be evaluated as part of the Stage 2 award process.

A. Medium-Level **Business** Requirements

1. Provide EMR core features as follows. The solution should:
 - a. Provide e-form capability;
 - b. Provide a patient-centric EMR with integrated workflows;
 - c. Provide summary lists, including problem lists, allergy/adverse reactions, and medication lists;
 - d. Provide template-driven nursing and physician documentation;
 - e. Provide stay-based care documentation;
 - f. Track patient requests for services that trigger encounters and/or appointments;
 - g. Schedule patients, providers, and other required resources;
 - h. Track encounters and dependencies between encounters (e.g. preparatory lab work before physician appointment);
 - i. Track referrals and consultations;
 - j. Provide clinical assessments including system-provided assessments and CCHCS-defined assessments;
 - k. Track measurements (e.g. vital signs) and test results;
 - l. Provide reminders, alerts, and recalls; and
 - m. Provide modifiable patient education materials.
2. Provide the following order management capabilities. The solution should:
 - a. Provide an interface for physician order entry with capability to customize by clinician and/or setting for quick-entry of common orders;
 - b. Provide standardized orders and custom CCHCS order set capabilities; and



- c. Generate reports of order results and track each report's review and approval.
3. Provide patient management capabilities as follows. The solution should:
 - a. Provide intake and discharge management functionality;
 - b. Provide level of care management functionality;
 - c. Have capability to define and track patient care plans;
 - d. Track patient consents, referrals, advanced directives, and patient preferences;
 - e. Track patient movement and patient schedule;
 - f. Provide bed management functionality;
 - g. Provide census functionality; and
 - h. Track medical equipment assigned to a patient (e.g., wheelchair, pulmonary machine, etc.).
4. Provide comprehensive medication management functionality. The solution's medication management functionality will either replace or interface CCHCS' Central Fill Pharmacy software (i.e., Maxor/GuardianRx). The solution should:
 - a. Provide dispensing management and support all dispensing requirements within the State of California;
 - b. Provide First Databank clinical decision support capabilities;
 - c. Allow tailoring of the clinical alerts to prevent alert fatigue;
 - d. Have PIMS (Patient Information Management System) module native with the orders communications module allowing the databases to be synchronized in real time;
 - e. Support the functionality of eMAR;
 - f. Provide end-to-end continuity from the physician order to medication administration;
 - g. Allow for a high degree of customization without custom-coding;
 - h. Have the ability to interface with non-HL7 (Admission/Discharge /Transfer) systems;
 - i. Provide electronic messaging capabilities among CCHCS' pharmacists, physicians and nurses; and
 - j. Allow prescribing remotely.
5. Provide the following terminology services capabilities. The solution should:
 - a. Include a medical terminology dictionary and spell checker; and
 - b. Support abbreviations, synonyms, and other non-standard verbiage (e.g., Logical Observation Identifiers Names and Codes [LOINC], etc.).



6. Provide data management and reporting capabilities. The solution should:
 - a. Have the capability for multiple users to access records and update the same data (i.e., no "soft locks" on records), and reflect all updates sequentially within the system to ensure no transactions are lost;
 - b. Store data in, or exportable to, standard data formats for fulfillment of external Public Records Act requests, and to support CCHCS' appeals and audit process(es); and
 - c. Provide operational reporting and meaningful use reporting for pharmacy functionality.
7. The solution should provide a built-in Enterprise Master Patient Index (EMPI) system or have verified ability to integrate with a proven vendor's EMPI product.
8. If CCHCS elects to procure Contractor's hardware, a California Seller's Permit will be required with Contractor's revised Stage 2 proposal.

B. Medium-Level **Technical** Requirements

1. Role-based Access Control
 - a. The solution should have Role Based Access Control (RBAC), which consists of the five (5) basic elements established by American National Standards Institute (ANSI), International Committee for Information Technology Standardization (INTS) 359-2004: Users, Roles, Objects, Operations, and Permissions.
2. Workflow
 - a. The solution should have workflow capabilities that include the following elements: roles, routings, and rules.
 - b. The workflow capability should be configurable to support client-specific business processes.
3. Integration Architecture
 - a. The solution should support use of a Service Oriented Architecture (SOA) approach. (Minimum Mandatory Technical Requirement – Stage 1.)
 - b. The Integration Architecture should comply with Web Service Interoperability Organization (WS-I) standards that ensures interoperability.
4. Information Model
 - a. The solution should support the ability to extend the off-the-shelf data model/data dictionary to track CCHCS-specific attributes.



- b. Examples include: a) patient effective communication attributes to meet ADA requirements; b) CCHCS medical classification attributes; and c) custody housing and security levels.
5. Data Integrity. The solution should:
 - a. Support the configuration and enforcement of data constraints and rules to ensure data quality: and
 - b. Provide point-in-time data recovery capability in the event of data corruption.
6. Electronic Forms
 - a. The solution should support the use of electronic forms that can be customized to support client-specific data attributes and business rules.
 - b. The electronic forms should be capable of being associated with a workflow.
7. Reporting

The solution should provide reporting capabilities that include a data warehouse to separate operational transaction loads from analytical processes and reporting capabilities.
8. Mobile Device Support

The solution should be extensible to support mobile devices for clinical functions.
9. Platform Support

Proposed solution software should be supported (e.g. database, operating system, middleware, etc.).

No software currently at end-of-life will be acceptable. CCHCS may seek Bidder's platform support for at least five years after end-of-life at same rate as in the ensuing agreement.
10. Scalability.

The solution should be capable of scaling as the number of users, number of patient-inmates, and number of transactions increase without the need to make solution architecture or design changes.

 - CCHCS recognizes that additional hardware may be required to meet additional workload requirements.
11. Identify co-pay and receipt of payment or non-payment.
12. Include functionality for:
 - Dietary; and
 - Rehabilitation.



V.7. Future EMR Projects

The agreement resulting from this RFP may be amended to add any and/or all of the following options:

1. Mobile interface development;
2. Specialty EMR solutions;
3. Integration of EMR with CCHCS central fill pharmacy system (i.e., Cornerstone Automation Systems, Inc. [CASI]);
4. Dental information management system; and
5. Capture diagnostic usage data with an interface to CCHCS' Third Party Administrator (TPA) system, and/or create or replace a TPA system interface.

V.8. Deliverable Acceptance Criteria

1. All completed work shall be submitted to the CCHCS' Project Executive Stakeholders, or designee, for review, approval or dispute.
 - A Deliverable Expectations Document and/or Deliverable Acceptance Document must be submitted by Contractor and approved by CCHCS' Project Executive Stakeholders, or designee.
2. It is CCHCS' sole determination as to whether a deliverable has been successfully completed and is acceptable to CCHCS' Project Executive Stakeholders, or designee.
 - CCHCS will review and validate deliverables prior to final acceptance.
 - If a deliverable is not accepted, the State shall provide the reason, in writing, within ten (10) business days of receipt of said deliverable.

V.9. Contractor Roles and Responsibilities

In addition to Scope of Services, above, Contractor and consultants are required to do all of the following:

1. Collaborate with staff members to identify issues and risks, maintain decision and issue log, and ensure prompt resolution of issues;
2. Comply with all applicable policies and procedures, including those enumerated in special provisions;
 - By accepting Agreement, Contractor (including personnel) acknowledges that he/she has read and agrees to State general and special provisions.
3. Return all CCHCS property including security badges, computer laptop, work products, etc., prior to termination of Agreement, if applicable;
4. Be tested for Tuberculosis and certified to be free of tuberculosis on the TB Infectious Free Staff Certification in order to gain entrance to the Institutions, if applicable;
5. Have Live Scan and security background checks equivalent to those performed for CCHCS employees;



6. Complete a Request for Gate Clearance Form, Application for Identification Card, and/or Emergency Notification form in order to gain entrance to the institutions, if applicable;
7. Agree to abide by CDCR's Digest of Laws Related to Association with Prison Inmates;
8. Participate in meetings, provide expertise, gather required information, and make recommendations, as appropriate;
9. Contractor's consultant(s) will actively participate in information gathering meetings, fact-finding meetings, working sessions, risk reporting, status reporting, presentations (both verbal and written), and general communications on an ongoing basis; and
10. Perform any other duties as requested by Project Executive Stakeholders or designee(s).

V.10. CCHCS Roles and Responsibilities

1. CCHCS may provide cubicle accommodations at 660 J Street, Sacramento, California or another designated location within Sacramento County. Accommodations may include a desk, telephone, computer hardware, network access, and software necessary for performance of the work.
2. CCHCS will not provide consultant(s) with smart phones, cell phones, etc.
3. CCHCS will be responsible to monitor and review deliverables as invoiced.
4. CCHCS will help resolve and escalate issues within the organization, as necessary.
5. CCHCS may provide Contractor access to applicable files, reports, contracts, documents, and other relevant information.
6. CCHCS will provide staff availability for consultation meetings.
7. Provision of clerical or other support services is strictly at the option of CCHCS. Contractor should assume that CCHCS will not provide any assistance of a clerical nature for documents or telephone support.

V.11. Assumptions and Constraints

1. Any modifications to SOW of the ensuing Agreement will be defined, documented and mutually agreed upon by Contractor and CCHCS' Executive Stakeholders, or designee.
2. Services not specified in Scope may only be performed pursuant to a work authorization signed by CCHCS.
3. CCHCS reserves the right to renegotiate services deemed necessary to meet the needs of the project according to CCHCS priorities. CCHCS and Contractor shall mutually agree to all changes and renegotiated services outside the scope of the initial contract will require Receiver's approval.



- Work Authorization

Either party may at any time propose a change to Scope. If Contractor believes that such change will increase Contractor's costs or delay completion, the parties will negotiate in good faith to try to accommodate such requests. Contractor will price any additional fees, at CCHCS' option, based on time and material rate(s) or fixed cost. Contractor will disclose and explain to CCHCS its method of pricing a change order. At CCHCS' request, the parties will use project estimation tools to aid in determining pricing and to ensure that it is competitive in the marketplace. No change will be effective unless and until set forth in a written amendment to the Agreement, which is approved and signed by the parties. Any agreed upon modifications will be performed by Contractor in accordance with the amendment and Agreement provisions. Any failure to agree to a proposed change will not impair the enforceability of other Agreement terms or in Scope.

4. Contractor must submit, in advance, a resume of all personnel substitutions. All Contractor personnel substitutions must be approved by the CCHCS' Executive Stakeholders, or designee, prior to substituted personnel commencing work.
5. CCHCS, in its sole discretion, reserves the right to require Contractor to substitute personnel.
6. Contractor represents that it has, or shall secure at its own expense, all staff to perform services described in the ensuing Agreement.
7. Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in performance of this Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
8. All travel expenses shall be specified in Bidder's cost. Any reimbursable travel and/or other expenses must be approved in advance by CCHCS and itemized in Contractor's invoice. Travel reimbursement may not exceed the rates, terms, and conditions that apply to comparable State employees, in accordance with travel rules and regulations, as specified in California Code of Regulations (CCR), Title 2, Division 1, Chapter 3, and/or the California Department of Personnel Administration (DPA), Sections 599.619 through 599.631. Travel expenses shall be submitted on a State of California Travel Expense Claim, Std. 262, and are to be submitted with Contractor's monthly invoice for the applicable time period.



V.12. Term of Contract

CCHCS intends to award contract(s) for an EMR solution, from June 30, 2012 through June 30, 2016.²¹

CCHCS reserves the right to extend the agreement for up to thirty-six (36) additional months and/or add funds for additional goods/services.

V.13. Termination

CCHCS shall have the right to terminate this Agreement at any time in its discretion, with or without cause, by written notice to Contractor.

Contractor shall stop work immediately upon receipt of a notice of termination and promptly deliver to CCHCS the results of Services to date of termination.

²¹ The initial 48 months consist of Stage 1, Stage 2, and post implementation maintenance and operations. The remaining term options for maintenance will be based on fixed ongoing costs.



VI. RATE SHEET

Bidders must provide separate cost for both Stage 1 and Stage 2 services.

Bidders' proposed Stage 2 cost will be an estimate, and Contractors that are awarded Stage 1 agreements shall propose a final cost as part of the Stage 2 selection process. Contractor's final Stage 2 cost may not exceed CCHCS' total budget allotment of fifty-nine million dollars (\$59,000,000.00).

CCHCS' Rate Sheet is attached electronically as an Excel Spreadsheet entitled; "EMR – Attachment 1 (Rate Sheet).xlsx".



VII. INITIAL STAGE EVALUATION

VII.1. Introduction

All proposals will be evaluated in a multi-step process to determine the proposals that provide the most viability, functionality, and value to CCHCS.

- CCHCS will conduct initial interviews (i.e., product demonstration) of at least the top two (2) scoring Bidders. Bidder's proposed personnel (i.e., Key Staff) or Subject Matter Experts (SMEs) must be available to participate in these interviews.

VII.2. Evaluation Committee

The RFP Evaluation Committee (Committee) will be comprised of three (3) or more individuals. The Committee will review the final proposals in accordance with the process set forth below. The Committee will use consensus to determine any proposal items that are scored as pass/fail and shall determine the average evaluation scores from all Committee members for each Bidder. After final evaluation scores are determined by the Committee, recommendation(s) will be provided to the Receiver.

- The Receiver retains the discretion to reject the recommendation(s) of the Committee and award the contract(s) to another deemed more qualified, or to no one.

VII.3. Review and Evaluation of Proposals

All proposals will be reviewed for responsiveness to RFP requirements specified in Sections III.2 (Response Requirements) and III.3 (Mandatory Requirements). If a bidder's proposal is missing required information, it shall be deemed non-responsive.

Bids will be scored according to the "Best Value" criteria in section VII.4 (Proposal Evaluation Criteria) below. Further review is subject to CCHCS' discretion.

CCHCS' evaluation process is based on an industry best practice technique called progressive filtering. The process steps are as follows:

1. Review Proposals' Mandatory Requirements;
 - a. Proposals are reviewed to ensure responsiveness and that bids submitted contain all sections (e.g. Cover Letter, Rate Sheet, Payee Data, Approach, etc.) specified in Sections III.2 (Response Requirements) and III.3 (Mandatory Requirements).
2. Review Proposals Based on Evaluation Criteria;
 - a. Proposals are scored according to Evaluation Criteria RFP requirements.
 - b. This step results in a Preliminary Evaluation Score.



3. Rank and Select Best Offers;
 - a. The Preliminary Evaluation Score (i.e., software functionality, software features, proposal viability, consultant qualifications, experience, etc.) used to determine the top three-to-five (3-5) bids.
4. Schedule and Perform Product Demonstration;
 - a. A minimum of the top two (2) scoring Bidders shall give a product demonstration and interview.
 - b. Bidders meeting all Stage 1 requirements with the highest Preliminary Evaluation Score shall perform an out-of-the-box product demonstration.²²
 - c. Bidder demonstrations and interviews are used to refine and validate assessed evaluation scores.
 - d. This step results in Final Evaluation Scores.
5. Review Bidder's Proposed Cost; and

Each Bidder's cost component score will be calculated based on the ratio of the Bidder's cost to the lowest cost from the other proposals, multiplied by the maximum number of cost points available.

 - a. Lowest cost proposal will receive full cost points and each proposal with higher cost will receive a percentage of total points; and
 - b. Bidders shall propose separate cost for Stage 1, out-of-the-box cost, and Stage 2 deliverables.
 - Bidders shall propose a fixed cost for Stage 1 and an estimated cost for Stage 2.
 - Out-of-the-box costs shall be the software license costs for the solution to meet minimum mandatory requirements.
6. Determine Best Value.

After all scores (i.e., Evaluation Scores, and Cost) have been determined, the best value scores will be identified.

The Committee will select a minimum of two (2) of the best value proposals and make recommendation for award(s) to the Receiver. The Receiver makes the final award decision.

 - a. Reference checks are performed at the discretion of the Committee.

VII.4. Proposal Evaluation Criteria

Based on proposal's response to III.2.A (Administrative Requirements), in particular Items 8, 9, and 10, the following scoring criteria will be used to determine best value.

²² Out-of-the-box demonstrations will be based on CCHIT test cases for Ambulatory, Long-Term Care, Behavioral Health, and Emergency Department certifications.



1. Cost Score (100 Points)

Each Bidder's cost score will be calculated based on the ratio of Bidder's cost to the lowest Stage 1 and out-of-box costs for mandatory core functionality cost, multiplied by the maximum number of cost points available. The formula for scoring the cost component of each proposal is as follows:

$$\frac{(\text{Lowest Total Cost Bid} \times \text{Total Cost Points Available})}{\text{Bidder Total Cost}}$$

Bidder Total Cost

Bidder	Cost	Calculation	Cost Points Awarded
A	\$2,000,000	$\frac{\$2,000,000 \times 100}{\$2,000,000}$	100
B	\$5,000,000	$\frac{\$2,000,000 \times 100}{\$5,000,000}$	80
C	\$6,200,000	$\frac{\$2,000,000 \times 100}{\$6,200,000}$	67

Example Cost Scoring

2. Bidder Experience (60 Points)

All of the following Contractor requirements will be evaluated based on Bidder's proposal:

1. A minimum of three (3) with a preferred eight (8) years in business as an EMR and/or Electronic Health Record (EHR) software provider;
2. Bidder has both remote and on-site software support available provided by Bidder's employees (i.e., not subcontractors);
3. Bidder has experience interfacing with dental EMR solutions, provided that dental EMR functionality is not included in Bidder's core EMR solution;
4. Recent (i.e., in the past 5 years) successful adoption of Bidder's software within a large (i.e., over 1,500 users) health care organization, which replaced pre-existing health information system(s);
5. Large health care organization (i.e., greater than 30,000 patients per year, at ten [10] or more sites, and over 1,500 EMR users) reference(s) for EMR implementation;
6. Reference(s) for EMR implementation to a health care organization of equivalent size and complexity;
7. EMR use by public sector client(s); and
8. EMR implementation(s) within correctional environment(s).



3. Clinical Approach (70 Points)

Bidder's Clinical Approach score will be based on submission of two (2) items: 1) Completion of Attachment 9 (EMR Clinical Evaluation Criteria); and 2) the Bidder's approach must address all of the topics described below.

- For each criterion, Bidder must identify how the proposed solution satisfies the criteria by completing two (2) fields per criterion: a) Solution Scope; and b) Solution Approach. Attachment 9 (EMR Clinical Evaluation Criteria) contains CCHCS' clinical evaluation criteria that are based on industry standards (e.g. HL7, NIST, HIPAA, and HITECH).

Solution Scope specifies the degree to which the proposed solution meets the criteria. Valid values are:

Fully Met	The proposed solution meets all aspects of the evaluation criteria.
Partially Met	The proposed solution meets some aspects of the evaluation criteria.
Not Met	The proposed solution does not meet the evaluation criteria.
Unknown	This is the default value. If Bidder does not select one of the above options, Unknown will be evaluated as Not Met.

Solution Approach specifies the method the proposed solution will leverage to meet the criteria. Valid values are:

COTS	The proposed solution meets the evaluation criteria based on off-the-shelf functionality. GUI-based configuration (i.e. COTS configuration) of the solution to meet the evaluation criteria is considered COTS.
Custom	The proposed solution meets the evaluation criteria based on custom development.
COTS/Custom	The proposed solution meets the evaluation criteria based on a combination of off-the-shelf functionality and custom development.
Unknown	This is the default value. If the bidder does not select one of the above options, Unknown will be evaluated as Custom.

Note: Any features that are planned to be incorporated into a vendor product (i.e. not currently available) should be identified as "COTS/Custom" or "Custom" depending on how it is implemented at existing customer sites.



Clinical Approach Topics

Bidder's proposal should describe all of the following:

- a. Proposed EMR's user-friendly interface available out of the box with built-in user tools for rapid documentation and increased user productivity;
 - Bidder's software should include American with Disabilities Act (ADA) compliant user interface options.
- b. Whether Bidder's solution can be configured to meet CCHCS' high-level requirements or whether customization will be required;
- c. Support for all levels of care;

Bidder's proposed solution must: 1) operate in many types of clinical situations including long term residential or sub-acute care, outpatient care, emergency care, and referrals to outside specialty services; and 2) describe how the proposed solution can meet all levels of care.
- d. Support for diverse medical disciplines;

Bidder's clinical approach must: 1) describe the proposed solution's approach for supporting medical, nursing, mental health, and pharmacy disciplines;²³ and 2) describe how the proposed solution can meet the needs of these medical disciplines.
- e. EMR user interface;

Bidder's clinical approach must describe: 1) how the proposed solution meets CCHCS' user interface requirements; 2) the degree to which the user interface is intuitive and efficient for users; and 3) features that have proven to be useful by the product's customer base for quality and/or productivity improvements.
- f. Alignment with industry standards;

Bidder's solution must: 1) support the industry standard clinical vocabularies outlined in this RFP (e.g., CCHIT, HL7, and DICOM); 2) compliance with industry-standard requirements outlined in this RFP (e.g., CCHIT certifications); 3) how the proposed solution supports these standards; and 4) bidder's vision and strategy to continue alignment with healthcare industry standards.
- g. Proposed pharmacy solution;

Bidder's proposed pharmacy solution must: 1) integrate with the other EMR functions to provide end-to-end Medication Management from Physician Order Entry through Medication Administration and Reconciliation; 2) interface CCHCS' GuardianRx system; and 3) supports CCHCS' goal of end-to-end Medication Management.

²³ Each of these disciplines is unique to the healthcare industry, as well as within the CCHCS environment.



h. Dental Practice Management System approach.

If available, Bidder's clinical approach must: 1) include proof of one or more examples of Dental practice management systems that have been successfully interfaced or integrated with proposed EMR solution; and 2) specify whether the interface was seamless or involved middleware from another organization.

- If another organization was involved, indicate the name of organization and whether or not they are/were a business partner.
- Specify if the solution supports editable tooth charts.

i. Describe ability to integrate with existing components; and

Bidder's Clinical Approach must describe: 1) proposed solution for integrating with CDCR's custody system to provide the patient record; 2) the proposed approach for integrating with Quest360; and 3) the proposed approach for integrating with Fuji RIS/PACS.

- CCHCS relies on CDCR's custody system (i.e., Strategic Offender Management System [SOMS]) to provide patient demographic data and a unique person identification number (PID).
- CCHCS utilizes Quest for laboratory services.
- CCHS utilizes a Fuji Radiology Information System (Fuji RIS/PACS).

j. EMR Clinical Approach Evaluation Overview.

4. Technical Approach (70 Points)

Bidder's Technical Approach score will be based on submission of two (2) items: 1) Completion of the Attachment 8 (EMR Technical Evaluation Criteria), following the instructions described below for the EMR Technical Evaluation Criteria; and 2) Bidder's approach must address all of the topics described below.

- For each criterion, Bidder must identify how the proposed solution satisfies the criteria by completing two (2) fields per criterion: a) Solution Scope; and b) Solution Approach. Attachment 8 (EMR Technical Evaluation Criteria) contains CCHCS' technical evaluation criteria that are based on industry standards (e.g. HL7, NIST, HIPAA, and HITECH).

Solution Scope specifies the degree to which the proposed solution meets the criteria. Valid values are:

Fully Met	The proposed solution meets all aspects of the evaluation criteria.
Partially Met	The proposed solution meets some aspects of the evaluation criteria.



Not Met	The proposed solution does not meet the evaluation criteria.
Unknown	This is the default value. If the bidder does not select one of the above options, Unknown will be evaluated as Not Met.

Solution Approach specifies the method the proposed solution will leverage to meet the criteria. Valid values are:

COTS	The proposed solution meets the evaluation criteria based on off-the-shelf functionality. GUI-based configuration (i.e. COTS configuration) of the solution to meet the evaluation criteria is considered COTS.
Custom	The proposed solution meets the evaluation criteria based on custom development.
COTS/Custom	The proposed solution meets the evaluation criteria based on a combination of off-the-shelf functionality and custom development.
Unknown	This is the default value. If the bidder does not select one of the above options, Unknown will be evaluated as Custom.

Note: Any features that are planned to be incorporated into a vendor product (i.e. not currently available) should be identified as “COTS/Custom” or “Custom” depending on how it is implemented at existing customer sites.

Technical Approach Topics

Bidder's proposal should describe all of the following:

a. COTS based architecture;

An underlying architecture principle for the EMR is to be COTS-centric, which means the architecture shall feature a robust COTS system as its central component. A major consideration in the selection of a Bidder is the degree to which the Bidder has proposed a solution based on a mature COTS solution. The Technical Approach shall describe how the proposed solution meets the evaluation criteria. Please identify any custom components needed to meet CCHCS' functional and technical requirements.

b. Solution customization and configuration capabilities;

CCHCS desires an industry proven COTS solution and also needs to support CCHCS-specific business requirements such as mandated court monitor requirements. The Technical Approach shall describe how the proposed solution can meet CCHCS-specific business processes, forms, workflows, business rules, and reporting requirements.



c. Non-HL7 system integration strategy;

Bidder's clinical approach must address the proposed solution's ability to interface Level of Care Management and Discharge Management with non-HL7 systems.

d. EMR data management and reporting capabilities;

CCHCS needs to track specific health information attributes that include, but are not limited to: 1) patient-inmate medical classification; 2) patient-inmate effective communications scores; 3) patient-inmate security level; and 4) court-ordered medication rulings (i.e., Keyhea).

Bidder's clinical approach must describe: 1) how the proposed solution can support CCHCS' specific data attributes; 2) the breadth and depth of the reporting and analytical features of the proposed solution; and 3) how CCHCS' unique data needs are supported by these capabilities.

e. Solution security;

The proposed solution shall provide assurances and will demonstrate compliance with all applicable State and federal security and privacy requirements, including all of the following:

- i. The Health Insurance Portability and Accountability Act (HIPAA) as defined in the Security Rule located at 45 CFR Part 160 and Subparts A and C of Part 164 utilizing the Federal Information Security Management Act (FISMA) and the relevant controls identified in the National Institute of Standards (NIST) [SP 800-53a](#) document;
- ii. The Office of Management and Budget (OMB) Circular A-130 Appendix III, (e.g. as required under the Centers for Medicare and Medicaid Services (CMS) data use agreement);
- iii. The Confidentiality of Medical Information Act, California Civil Code Sections 56-56.16;
- iv. The California State Administrative Manual (SAM – Chapter 5300); and
- v. The California Statewide Information Management Manual (SIMM).

f. Integration strategy; and

The proposed solution must integrate with the existing CCHCS environment and external interface requirements. Please describe how the proposed solution will meet the integration evaluation criteria.

g. Solution availability strategy.

The proposed solution must be highly available within a healthcare and prison environment. Please describe how the proposed solution meets high availability requirements both from a system architecture perspective (e.g.



failover, load balancing), user perspective (e.g. acceptance performance) and from an operational perspective (e.g. monitoring, alerts).

VII.5. Preference Programs

CCHCS hereby waives participation in the following preference programs:

- a. Disabled Veteran Business Enterprise (DVBE);
- b. Target Area Contract Preference Act (TACPA);
- c. Enterprise Zone Act (EZA);
- d. Local Area Military Base Recovery Act (LAMBRA); and
- e. Small Business (SB).

No preference points will be given for the above programs.

VII.6. Selection of Contractor(s)

The Evaluation Committee will submit its recommendation to the Receiver. The Receiver will then make a final determination and authorize negotiations with two or more of the Bidders whose responses are most advantageous to the Receiver.

The Receiver retains the discretion to reject the recommendation of the Committee and award the Contract to other Bidder(s) deemed more qualified, or to no one.

- a. CCHCS may enter into contract negotiations at this time including, but not limited to, rate/cost negotiation.



VIII. STAGE 1 AND STAGE 2 EVALUATION

VIII.1. Introduction

Contractor's Stage 1 deliverables and revised Stage 2 proposal will be evaluated in a multi-step process to determine the proposals that provide the most viability, functionality, and best value to CCHCS.

VIII.2. Evaluation Committee

The RFP Evaluation Committee (Committee) will be comprised of three (3) or more individuals. The Committee will review the final proposals in accordance with the process set forth below. The Committee will use consensus to determine any proposal items that are scored as pass/fail and shall determine the average evaluation scores from all Committee members for each Contractor. After final evaluation scores are determined by the Committee, recommendation(s) will be provided to the Receiver.

- The Receiver retains the discretion to reject the recommendation(s) of the Committee and award the Stage 2 contract amendment to another deemed more qualified, or to no one.

VIII.3. Review and Evaluation of Proposals

Contractor's revised Stage 2 proposal will be scored according to the "Best Value" criteria. The specific evaluation criteria will be based on detailed requirements provided during Stage 1 performance, and may be revised at CCHCS' sole discretion.

Stage 1 and Stage 2 evaluation will include, but not be limited to, all of the following:

a. Stage 1 Technical and Clinical Requirements Score;

Revised Stage 2 proposals will be evaluated according to the medium-level requirements specified in section V.6 (Medium-Level Requirements) and CCHCS use cases provided during Stage 1.

b. Stage 1 Experience and Expertise Score; and

Contractor's revised proposal shall include resumes for personnel (i.e., Key Staff), which must include all of the following:

- All relevant EMR experience(s);
- A start and end date for each job cited; and
- Personnel qualifications and experience(s) designing, developing and/or implementing an IT solution.

c. Stage 2 Implementation and Ongoing Cost Score.

Contractor's Stage 2 costs will be based on the revised proposal's approach and shall include all of the following:



- Software licensing fees, including any third-party software fees;
- Stage 2 development and implementation costs, including the cost of Bidder's proposed System Integrator and any other external consultant(s) and/or subcontractor(s);
- A bill of materials for all hardware components in addition to current CCHCS IT infrastructure required for proposed EMR implementation; and
- Ongoing costs (i.e., annual maintenance or support fees, hosting costs, fees, and/or any other recurring costs).

VIII.4. Negotiation Process / Confidential Discussion(s)

The Evaluation Committee will conduct negotiations after receipt and scoring of Contractors' revised Stage 2 Proposals to select the best value as follows:

- a. Negotiations will be conducted to maximize CCHCS' ability to obtain the best value, based on the requirements and evaluations factors set forth in the RFP. Negotiations are exchanges between CCHCS and Contractors, which are undertaken with the intent of allowing Contractor to revise their Stage 2 proposal. Negotiations will be conducted either orally or in writing. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give and take, and may apply to price, schedule, functional or technical requirements, or other terms of the proposed Contract Amendment. Negotiations will be conducted with only those Stage 1 Contractors.
- b. The Evaluation Committee may discuss other aspects of Contractor's revised Stage 2 proposal that could, in the opinion of CCHCS, be altered or explained to enhance materially the Stage 2 proposal for contract amendment. The Evaluation Committee however is not required to discuss every area where Stage 1 Contractor's proposal could be improved.

VIII.5. Stage 2 Final Proposal Revision

The Evaluation Committee may request or allow Stage 2 proposal revisions to clarify and document understanding reached during negotiations. At the conclusion of Stage 2 negotiations, each Stage 1 Contractor will be given an opportunity to submit a revision (including revised costs) to the Stage 2 Proposal. The Evaluation Committee will afford each Stage 1 Contractor equal timeframes to revise their Stage 2 Proposal.

The request for Stage 2 Final Proposal will also:

- a. Instruct Stage 1 Contractors to incorporate all changes to their proposals resulting from negotiations, and require clear traceability from initial proposals.
- b. Caution Stage 1 Contractors that late Stage 2 Final Proposal revisions will be rejected.



- c. Inform Stage 1 Contractors that CCHCS intends to enter into a Contract Amendment after its review.

Should the Evaluation Committee require a revision to Contractor's Stage 2 Proposal based on negotiation discussions, CCHCS will do so in writing and Contractor must resubmit their entire Stage 2 Proposal with necessary revisions clearly delineated.

VIII.6. Evaluation of Revised Stage 2 Final Proposal

Upon completion of evaluation of Stage 2 proposal revision(s), the Evaluation Committee will recommend contract amendment with the Contractor presenting the best overall value in response to the RFP.

VIII.7. Selection of Contractor

The Evaluation Committee will make a final evaluation and submit its recommendation to the Receiver. The Receiver will then make a final determination and authorize negotiations for awarding the Stage 2 contract amendment to the most advantageous Contractor.

The Receiver retains the discretion to reject the recommendation of the Committee and require a contract amendment with another Contractor deemed more qualified, or to no one.



**ATTACHMENT A
PAYEE DATA RECORD (STD 204)**

The Payee Data Record (STD 204) can be located at the link below:

<http://www.documents.dgs.ca.gov/osp/pdf/std204.pdf>



**ATTACHMENT B
CONTRACTOR CONFIDENTIALITY STATEMENT**

I understand that Consultant can be categorized as a public official for purposes of adherence to Conflict of Interest laws and the filing of a Statement of Economic Interests (Form 700). I certify that I have read and understand Conflict of Interest provisions identified in the online presentation “Ethics Orientation for State Officials” sponsored by the State of California Department of Justice, Office of the Attorney General and the Fair Political Practices Commission located at <http://caag.state.ca.us/ethics/index.htm>.

I certify that I have no personal or financial interest and no present or past employment or activity which would be incompatible with my participation in any activity related to the planning or procurement processes for the EMR Solution (RFP #12-009-ITS). For the duration of my involvement in this Project, I agree not to accept any gift, benefit, gratuity or consideration, or begin a personal or financial interest in a party who is offering, or associated with a business, on the Project.

I certify that I will keep confidential and secure and will not copy, give or otherwise disclose to any other party who has not signed a copy of this confidentiality Agreement, all information concerning the planning, processes, development or procedures of the Project and all bids, proposals, correspondence, etc. which I learn in the course of my duties on the Project. I understand that the information to be kept confidential includes, but is not limited to, specifications, administrative requirements, terms and conditions, any aspect of any supplier’s response or potential response to the solicitation, and includes concepts and discussions as well as written or electronic materials. I understand that if I leave this Project before it ends, I must still keep all Project information confidential. I understand that following completion of this project that I must still maintain confidentiality should the Project and/or my organization be subject to follow-on contracting criteria per Public Contract Code §10365.5. I agree to follow any instructions provided related to the Project regarding the confidentiality of Project information.

I fully understand that any unauthorized disclosure I make may be grounds for civil or criminal penalties and/or contract termination. I agree to advise the Director of the CCHCS Project Management Office immediately in the event that I either learn or have reason to believe that any person who has access to Project confidential information has or intends to disclose that information in violation of this Agreement. I also agree that any questions or inquiries from bidders, potential bidders or third parties shall not be answered by me and that I will direct them to CCHCS’ Project Management Office.

Signature: _____ Date: _____

Printed Name: _____ Title: _____

Organization: _____ Telephone Number: _____

Fax Number: _____

Email Address: _____



**ATTACHMENT C
NON-DISCLOSURE AGREEMENT**

I certify that I will hold in confidence all discussions, bids, proposals, correspondence, memoranda, working papers, procurement of goods and services, or any other information on any media, which has any bearing on or discloses any aspect of the effort or related projects. Based on my involvement with CCHCS projects, where applicable, I certify that I have no personal or financial interest and no present employment or activity, which would be incompatible with my participation in the discussions, review and or participation in the procurement process for the CCHCS projects and related initiative(s)/procurement(s)/trainings thereof.

At all times during and after the process by which the California Correctional Health Care Services and/or the California Department of Corrections and Rehabilitation (CDCR) procures goods and services to create the EMR solution, CCHCS' and/or CDCR's employees, CCHCS' prospective bidders, and/or CCHCS and/or CDCR's vendors will keep confidential, and will not disclose to any third party or use, such confidential information, except in the course of their employment by or contractual relationship with the Department, and for the benefit of CDCR. The parties will protect CCHCS' and/or CDCR's confidential information using the same degree of care, but no less than a reasonable degree of care, as such party uses to protect his/her/its own confidential information. The parties will carefully restrict access to CCHCS' confidential information, and they may disclose it only to their employees, contractors, and/or other State agencies that have a need to know it and are bound by obligations of confidentiality.

I certify that I am fully able to provide fair and impartial consideration and contribution to all aspects of this project in which I am directly involved. I fully understand that any such disclosure by an employee of the State of California may be considered as a basis for disciplinary action.

Signature: _____ Date: _____

Printed Name: _____

Title _____

Organization: _____

Telephone Number: _____

Fax Number: _____

Email Address: _____



**ATTACHMENT D
STATEMENT OF ECONOMIC INTERESTS (FORM 700)**

The Statement of Economic Interests (Form 700) can be located at the link below:

<http://www.fppc.ca.gov/index.php?id=500>

STANDARD AGREEMENT

FOR I.T. GOODS/SERVICES ONLY

		REGISTRATION NUMBER
PURCHASING AUTHORITY NUMBER		AGREEMENT NUMBER C12.XXXX

1. This Agreement is entered into between the State Agency and the Contractor named below

STATE AGENCY'S NAME

California Department of Corrections and Rehabilitation (CDCR)

CONTRACTOR'S NAME

2. The term of this Agreement is: June 30, 2012 through June 30, 2015

3. The maximum of this Agreement **\$40,000.00**

4. The parties agree to comply with the terms and conditions of the following attachments, including Contractor's response to Request for Proposal (RFP #12-009-ITS), which is incorporated and made a part of this agreement by reference:

Exhibit A –	Statement of Work	5	Pages
Exhibit B –	Budget Detail and Payment Provisions	2	Pages
Exhibit C -	General Provisions	15	Pages
Exhibit D -	Special Provisions	9	Pages
Attachment 1	Cost Worksheet(s)	X	Pages

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		CALIFORNIA Department of General Services Use Only	
CONTRACTOR'S NAME <i>(If other than an individual, state whether a corporation, partnership, etc.)</i>			
BY <i>(Authorized Signature)</i>		DATE SIGNED	
PRINTED NAME AND TITLE OF PERSON SIGNING			
ADDRESS			
STATE OF CALIFORNIA			
AGENCY NAME			
Department of Corrections and Rehabilitation			
BY <i>(Authorized Signature)</i>		DATE SIGNED	
PRINTED NAME AND TITLE OF PERSON SIGNING			
J. CLARK KELSO, Receiver			
ADDRESS			
PO Box 4038, Sacramento, CA 95812			

**EXHIBIT A
STATEMENT OF WORK**

1. INTRODUCTION

In order to provide constitutionally adequate medical care to patient-inmates and to help determine the strategy for completing CCHCS' CDR and pharmacy systems, a review of electronic health record options has determined that the best strategy moving forward is to procure an EMR software solution.¹

This agreement is to procure a software solution including license(s), hardware, implementation, and maintenance and support services that is configured to provide a core set of EMR features according to CCHCS requirements (i.e., order entry, results review, nursing and physician documentation, registration/scheduling, etc.).

CCHCS supports all health care related services for CDCR patient-inmates including, but not limited to, all of the following programs:

- Medical;
- Mental Health;
- Dental;
- Nursing;
- Dietary;
- Rehabilitation;
- Laboratory;
- Pharmacy;
- Radiology;
- Health Records; and
- Registration/Scheduling.

While primary outpatient care is most prevalent at CCHCS, there is also unit-based care provided throughout the institutions. Bidders proposed EMR solution must be versatile for all types of clinics and will be used by clinicians throughout the State prison system, including Correctional Treatment Centers (CTCs) and Outpatient Housing Units (OHUs).

In addition to unit-based care, CCHCS provides health care services via telemedicine for patient-inmates. The EMR solution must be remotely accessible in accordance with HIPAA regulations supporting both telemedicine and telepsychiatry.

While EMR billing functions are out of scope the health care encounter data, including diagnostic and procedure codes and performance indexes, will need to be tracked and reported.

CCHCS plans its first implementation of an EMR solution to have "out of the box" core EMR functionality (i.e., order entry, results review, nursing and physician documentation, registration/scheduling, etc.).

¹ System acquisition includes bill of materials for hardware and software required to operate the proposed EMR solution or, alternatively, for annual hardware hosting costs.

2. STAGE 1 DELIVERABLES

Stage 1 Contractors will be required to submit revised proposals for Stage 2 services after CCHCS' acceptance of all Stage 1 deliverables. Revised proposal(s) will be evaluated based on the selection process specified in RFP #12-009-ITS.

In Stage 1, Contractor will design an EMR solution for second stage EMR build and implementation.

Over a four (4) month period, each Stage 1 Contractor will perform all of the following deliverables, on a fixed-cost basis, and coordinate/communicate with CCHCS' Project Manager and/or other stakeholders:

A. Deliverable 1 – Fit Gap Analysis;

Contractor and/or their subcontractor(s) shall work with CCHCS or CCHCS' contractor designated to gather all EMR detailed requirements to ensure all applicable requirements are defined.

Concurrent to detailed requirements gathering performed by CCHCS or CCHCS' contractor, Contractor will conduct a detailed analysis of CCHCS' EMR requirements to determine the best solution or "fit" that meets CCHCS' needs (i.e., identify potential gaps between Contractor's software and CCHCS' specific requirements).

The analysis shall identify, analyze, and document how Contractor's EMR solution will meet CCHCS' requirements with:

1. Out-of-the-box functionality;
2. Third-party component(s);
3. Customized component(s); and/or
4. Customized third-party component(s).

Any requirement that cannot be met by Contractor's proposed EMR software (either with or without supporting third-party software) will also be documented.

If any third-party software is proposed, Contractor's analysis shall also specify how each third-party product will:

1. Integrate into the EMR solution (i.e., into a module of Contractor's software, via customization of the EMR, as a stand-alone application, or into CCHCS' IT system[s]);
2. Be updated; and
3. Be managed.

SPECIFIC DELIVERABLE(S):

Fit Gap Analysis.

ACCEPTANCE CRITERIA:

Approval of deliverable by CCHCS within four (4) weeks of Stage 1 contract execution.

B. Deliverable 2 - Design EMR Solution Architecture;

Contractor shall develop a detailed written architecture for their EMR solution based on CCHCS' detailed requirements and Contractor's detailed analysis (i.e., fit gap). Contractor must use the results of Deliverable 1 as a basis for their EMR solution design.

Contractor's architecture must be a complete design for CCHCS' EMR including, but not limited to, all of the following:

1. Configuration of core-suite features (e.g., stay-based care documentation, flowsheets, level of care management, discharge management, order entry, nursing and physician documentation, results review, encounter-oriented documentation, and reminders, alerts, recalls, etc.) according to fit gap analysis;
2. Design of user and administration interface(s) to core-suite EMR solution;
3. EMR system automated rules definitions;
4. Design of EMR solution integration into CCHCS' pharmacy systems (i.e., GuardianRx/CASI);
5. System interfaces to CCHCS' laboratory (i.e., Quest/Care360), electronic unit health record (i.e., Documentum), and radiology (i.e., Fuji RIS/PACS) systems;
6. Use cases and test cases;
7. Database table linking, normalization, and indexing;
8. Development tools (e.g., APIs) and/or third-party applications that extend EMR solution functionality; and
9. Available method(s) for future mobile user interface development, if any.

Diagrams included within the EMR solution architecture design will be created using a standard format chosen by CCHCS (e.g., UML, Microsoft Visio).

SPECIFIC DELIVERABLE(S):

Written EMR solution architecture including all diagrams, tables, and supporting documentation.

ACCEPTANCE CRITERIA:

Approval of deliverable by CCHCS within four (4) weeks of Deliverable 1 acceptance.

C. Deliverable 3 – Build and Demonstrate Architecture Prototype; and

Contractor shall develop/build and demonstrate a fully-functional EMR solution "proof of concept" prototype that validates designed architecture. Contractor's prototype must meet Stage 2 high-level requirements and be deployed in a test-environment component of the same IT infrastructure used for EMR implementation.

The "proof of concept" prototype shall demonstrate, at minimum, all of the following:

1. Core-suite functionality (e.g., stay-based care documentation, flowsheets, level of care management, discharge management, order entry, nursing and physician documentation, results review, encounter-oriented documentation, and reminders, alerts, recalls, etc.);
2. One (1) user and one (1) administration core-suite EMR solution interface;
3. An EMR solution application interface to at least one (1) key CCHCS health care system (e.g., GuardianRx, Care360, eUHR, etc.);
4. An example HL7 interface; and
5. Core-suite use cases and workflows.

SPECIFIC DELIVERABLE(S):

Functional architecture prototype, including demonstration.

ACCEPTANCE CRITERIA:

Approval of deliverable by CCHCS within four (4) weeks of Deliverable 2 acceptance.

D. Deliverable 4 – Stage 2 EMR Implementation Plan.

Contractor shall develop a detailed implementation plan for evaluation of Stage 2 award. The implementation plan must be written according to CCHCS' project management standards and policies and describe performance of all Stage 2 deliverables including, but not limited to, all of the following:

1. Proposed staffing plan and resumes including subcontractors (i.e., System Integrator);
2. All project tasks for each Stage 2 deliverable including task dependencies and other details;
3. A Bill of Materials (BoM) for all required solution hardware and/or software including a cost quote;²
4. CCHCS approved project management plan;
5. Project schedule for all Stage 2 deliverables;
6. Change management plan³;
7. Knowledge transfer and training plan;
8. Maintenance and operations plan;
9. All implementation costs, including related costs (e.g., initial training, travel, system certifications, etc.); and
10. Specify ongoing costs (e.g., software maintenance, Contractor supported services, hardware maintenance, device repair and replacement, data storage, data center operations, ongoing support resources, etc.).

SPECIFIC DELIVERABLE(S):

Written implementation plan

ACCEPTANCE CRITERIA:

Approval of deliverable by CCHCS within four (4) weeks of Deliverable 3 acceptance.

3. STAGE 2 DELIVERABLES

Upon award of Stage 2 contract amendment, Contractor shall deliver all of the following according to their approved EMR Implementation Plan:

A. Deliverable 1 – Build EMR Solution;

Contractor shall complete development and installation of all software, databases, and systems that shall comprise CCHCS' EMR solution according to CCHCS approved architecture.

² CCHCS may choose to purchase BoM items either directly from Stage 2 Contractor, or independently via internal procurement methods.

³ Change management plan must account for use of a current EMR system at Pelican Bay (i.e., MIPMS), and potential difficulty to convert.

Installation shall include all core EMR software, any additional interfaces, updates, patches, and/or third-party software. Installation shall be performed for a minimum of three (3) operating environments including:

1. Development;
2. Test; and
3. Production.

B. Deliverable 2 – Configuration and Testing;

Contractor shall configure the initial installation to be fully operational and test according to confirm complete functionality.

C. Deliverable 3 – Deployment;

Contractor shall deploy the solution to all thirty-four adult institutions and conduct final solution validation.

D. Deliverable 4 – Implementation and Change Management; and

Contractor shall train; resolve all issues resulting from any changes, and transfer knowledge for complete utilization of its EMR solution by all applicable CCHCS staff.

Contractors shall provide all required technical, training, process management, planning, and reporting documentation including, but not limited to, all of the following:

1. Manuals;
2. Source code;
3. System models, diagrams, and descriptions;
4. Process management plans;
5. Knowledge transfer and training plans;
6. Training course outlines and materials;
7. Business continuity plans;
8. Test plan, scripts and reporting templates/mechanisms;
9. Performance and capacity plan;
10. Operational and disaster recovery plan;
11. Support process and transition plan;
12. System security plan;
13. Quality management plan;
14. Administration procedures;
15. Support scripts and decision trees; and
16. Maintenance and operations (M&O) plan.

E. Deliverable 5 – Transfer to Maintenance and Operations.

Contractor shall provide a final EMR implementation report and transfer the solution to CCHCS maintenance and operations.

4. FUTURE EMR PROJECTS

The agreement resulting from this RFP may be amended to add any and/or all of the following options:

1. Mobile interface development;
2. Specialty EMR solutions;
3. Integration and of EMR with CCHCS central fill pharmacy system (i.e., Cornerstone Automation Systems, Inc. [CASI]); and
4. Dental information management system; and
5. Replace TPA system interface.

5. DELIVERABLE ACCEPTANCE CRITERIA

1. All completed work shall be submitted to the CCHCS' Project Executive Stakeholders, or designee, for review, approval or dispute.
 - A Deliverable Expectations Document and/or Deliverable Acceptance Document must be submitted by Contractor and approved by CCHCS' Project Executive Stakeholders, or designee.
2. It is CCHCS' sole determination as to whether a deliverable has been successfully completed and is acceptable to CCHCS' Project Executive Stakeholders, or designee.
 - CCHCS will review and validate deliverables prior to final acceptance.
 - If a deliverable is not accepted, the State shall provide the reason, in writing, within ten (10) business days of receipt of said deliverable.

6. CONTRACTOR ROLES AND RESPONSIBILITIES

In addition to Scope of Services, above, Contractor and consultants are required to do all of the following:

1. Collaborate with staff members to identify issues and risks, maintain decision and issue log, and ensure prompt resolution of issues;
2. Comply with all applicable policies and procedures, including those enumerated in special provisions;
 - By accepting Agreement, Contractor (including personnel) acknowledges that he/she has read and agrees to State general and special provisions.
3. Return all CCHCS property including security badges, computer laptop, work products, etc., prior to termination of Agreement, if applicable;
4. Be tested for Tuberculosis and certified to be free of tuberculosis on the TB Infectious Free Staff Certification in order to gain entrance to the Institutions, if applicable;
5. Have Live Scan and security background checks equivalent to those performed for CCHCS employees;
6. Complete a Request for Gate Clearance Form, Application for Identification Card, and/or Emergency Notification form in order to gain entrance to the institutions, if applicable;
7. Agree to abide by CDCR's Digest of Laws Related to Association with Prison Inmates;
8. Participate in meetings, provide expertise, gather required information, and make recommendations, as appropriate;

9. Contractor's consultant(s) will actively participate in information gathering meetings, fact-finding meetings, working sessions, risk reporting, status reporting, presentations (both verbal and written), and general communications on an ongoing basis; and
10. Perform any other duties as requested by Project Executive Stakeholders or designee(s).

7. CCHCS ROLES AND RESPONSIBILITIES

1. CCHCS may provide cubicle accommodations at 660 J Street, Sacramento, California or another designated location within Sacramento County. Accommodations may include a desk, telephone, computer hardware, network access, and software necessary for performance of the work.
2. CCHCS will not provide consultant(s) with smart phones, cell phones, etc.
3. CCHCS will be responsible to monitor and review deliverables as invoiced.
4. CCHCS will help resolve and escalate issues within the organization, as necessary.
5. CCHCS may provide Contractor access to applicable files, reports, contracts, documents, and other relevant information.
6. CCHCS will provide staff availability for consultation meetings.
7. Provision of clerical or other support services is strictly at the option of CCHCS. Contractor should assume that CCHCS will not provide any assistance of a clerical nature for documents or telephone support.

8. ASSUMPTIONS AND CONTRAINTS

1. Any modifications to SOW of the ensuing Agreement will be defined, documented and mutually agreed upon by Contractor and CCHCS' Executive Stakeholders, or designee.
2. Services not specified in Scope may only be performed pursuant to a work authorization signed by CCHCS.
3. CCHCS reserves the right to renegotiate services deemed necessary to meet the needs of the project according to CCHCS priorities. CCHCS and Contractor shall mutually agree to all changes and renegotiated services outside the scope of the initial contract will require Receiver's approval.

- Work Authorization

Either party may at any time propose a change to Scope. If Contractor believes that such change will increase Contractor's costs or delay completion, the parties will negotiate in good faith to try to accommodate such requests. Contractor will price any additional fees, at CCHCS' option, based on time and material rate(s) or fixed cost. Contractor will disclose and explain to CCHCS its method of pricing a change order. At CCHCS' request, the parties will use project estimation tools to aid in determining pricing and to ensure that it is competitive in the marketplace. No change will be effective unless and until set forth in a written amendment to the Agreement, which is approved and signed by the parties. Any agreed upon modifications will be performed by Contractor in accordance with the amendment and Agreement provisions. Any failure to agree to a proposed change will not impair the enforceability of other Agreement terms or in Scope.

4. Contractor must submit, in advance, a resume of all personnel substitutions. All Contractor personnel substitutions must be approved by the CCHCS' Executive Stakeholders, or designee, prior to substituted personnel commencing work.
5. CCHCS, in its sole discretion, reserves the right to require Contractor to substitute personnel.
6. Contractor represents that it has, or shall secure at its own expense, all staff to perform services described in the ensuing Agreement.
7. Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in performance of this Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
8. All travel expenses shall be specified in Bidder's cost. Any reimbursable travel and/or other expenses must be approved in advance by CCHCS and itemized in Contractor's invoice. Travel reimbursement may not exceed the rates, terms, and conditions that apply to comparable State employees, in accordance with travel rules and regulations, as specified in California Code of Regulations (CCR), Title 2, Division 1, Chapter 3, and/or the California Department of Personnel Administration (DPA), Sections 599.619 through 599.631. Travel expenses shall be submitted on a State of California Travel Expense Claim, Std. 262, and are to be submitted with Contractor's monthly invoice for the applicable time period.

9. TERM OF CONTRACT

CCHCS intends to award contract(s) for an EMR solution, from June 30, 2012 through June 30, 2015.

CCHCS reserves the right to extend the agreement for up to twenty-four (24) additional months and/or add funds for additional services.

10. TERMINATION

CCHCS shall have the right to terminate this Agreement at any time in its discretion, with or without cause, by written notice to Contractor.

Contractor shall stop work immediately upon receipt of a notice of termination and promptly deliver to CCHCS the results of Services to date of termination.

MODEL CONTRACT

**EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS**

1. INVOICING AND PAYMENT

For services satisfactorily rendered, and upon receipt and approval of an invoice, CCHCS agrees to reimburse Contractor for services on a deliverable basis (i.e., fixed-cost) in accordance with Exhibit B-1 (Rate Sheet).

Contractor shall submit an invoice in triplicate (with original signatures in blue-ink) specifying work delivered and any outstanding issues and/or concerns that need to be addressed.

- Invoices for reimbursement on a deliverable basis shall not be submitted more frequently than monthly in arrears and payments will not exceed ninety percent (90%) of the total price (i.e., deliverable cost). The ten percent (10%) withholding will be payable upon completion of all deliverables and final acceptance by CCHCS.

Invoices shall be submitted with all supporting documentation that properly details all charges, expenses, and direct costs. Contractor's invoice submitted to CCHCS must identify the Agreement number, location, and dates of training services. Any invoice submitted without the above referenced information may be returned to Contractor for re-processing.

Contractor shall address and submit all invoices to:

IT ACQUISITIONS
Administrative Support Services
California Prison Health Care Services
P.O. Box 4038
Sacramento, California, 95812-4038
ATTENTION: JOSIE PROVERBS

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 project, 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 the Agreement.
- b. If funding for purposes of this project is reduced or deleted for any fiscal year by the California State Budget Act, the State shall have the option to either cancel the 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. TRAVEL AND MISCELLANEOUS EXPENSES

Any reimbursable travel and/or other expenses must be approved in advance by CCHCS' DCIO or designee and itemized in Contractor's invoice. Travel reimbursement may not exceed the rates, terms, and conditions that apply to comparable State employees, in accordance with travel rules and regulations, as specified in California Code of Regulations (CCR), Title 2, Division 1, Chapter 3, and/or the California Department of Personnel Administration (DPA), Sections 599.619 through 599.631. Travel expenses shall be submitted on a State of California Travel Expense Claim, Std. 262, and are to be submitted with Contractor's monthly invoice for the applicable time period.

For purposes of this RFO, there is no travel budget allotted. All travel-related costs should be factored in Offeror's deliverable price(s) and submitted on Exhibit B-1 (Rate Sheet).

MODEL CONTRACT

**EXHIBIT B-1
RATE SHEET**

Contractor's Rate Sheet is attached and entitled:
"EMR – Attachment 1 (Rate Sheet)"

MODEL CONTRACT

GENERAL PROVISIONS

1. **DEFINITIONS:** Unless otherwise specified in the Statement of Work the following terms shall be given the meaning shown, unless context requires otherwise.
- a) **"Acceptance Tests"** means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.
 - b) **"Application Program"** means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.
 - c) **"Attachment"** means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer, that is not connected by the Contractor.
 - d) **"Business entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
 - e) **"Buyer"** means the State's authorized contracting official.
 - f) **"Commercial Software"** means Software developed or regularly used that:
 - (i) has been sold, leased, or licensed to the general public;
 - (ii) has been offered for sale, lease, or license to the general public;
 - (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or
 - (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
 - g) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
 - h) **"Custom Software"** means Software that does not meet the definition of Commercial Software.
 - i) **"Contractor"** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
 - j) **"Data Processing Subsystem"** means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent) and Operating Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
 - k) **"Data Processing System (System)"** means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors) and Operating Software, which are acquired to operate as an integrated group.
 - l) **"Deliverables"** means Goods, Software, Information Technology, telecommunications technology, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
 - m) **"Designated CPU(s)"** means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
 - n) **"Documentation"** means nonproprietary manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Documentation only to the extent that such materials are described in or required by the Statement of Work.
 - o) **"Equipment"** is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or subsystem, including its Hardware and Operating Software (if any).

- p) **"Equipment Failure"** is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.
- q) **"Facility Readiness Date"** means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.
- r) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
- s) **"Hardware"** usually refers to computer Equipment and is contrasted with Software. See also Equipment.
- t) **"Installation Date"** means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.
- u) **"Information Technology"** includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.
- v) **"Machine"** means an individual unit of a Data Processing System or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
- w) **"Machine Alteration"** means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
- x) **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
- y) **"Manufacturing Materials"** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
- z) **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.
- aa) **"Mean Time to Repair (MTTR)"** means the average expected or observed time required to repair a System or component and return it to normal operation.
- bb) **"Operating Software"** means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
- cc) **"Operational Use Time"** means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.
- dd) **"Performance Testing Period"** means a period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed Equipment and Software prior to its acceptance by the State.
- ee) **"Period of Maintenance Coverage"** means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- ff) **"Preventive Maintenance"** means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
- gg) **"Principal Period of Maintenance"** means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official

meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.

- hh) **"Programming Aids"** means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).
 - ii) **"Program Product"** means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
 - jj) **"Remedial Maintenance"** means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
 - kk) **"Site License"** means for each product, the term "Site License" shall mean the license established upon acquisition of the applicable number of copies of such product and payment of the applicable license fees as set forth in the Statement of Work.
 - ll) **"Software"** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
 - mm) **"Software Failure"** means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
 - nn) **"State"** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
 - oo) **"System"** means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
 - pp) **"U.S. Intellectual Property Rights"** means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.
- 2. COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.
- 3. SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
- 4. INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
- 5. APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
- 6. COMPLIANCE WITH STATUTES AND REGULATIONS:**
- a) Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.

- b) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- c) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that
 - (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability);
 - (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and
 - (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- d) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
- e) To the extent that this contract falls within the scope of Government Code Section 11135, Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.

7. CONTRACTOR'S POWER AND AUTHORITY: The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.

- a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that
 - (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability);
 - (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and
 - (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

8. ASSIGNMENT: This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.

9. WAIVER OF RIGHTS: Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

10. ORDER OF PRECEDENCE: In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

- a) these General Provisions (In the instances provided herein where the paragraph begins: "Unless otherwise specified in the Statement of Work" provisions specified in the Statement of Work replacing these paragraphs shall take precedence over the paragraph referenced in these General Provisions);
- b) Contract form, i.e., Purchase Order STD 65, Standard Agreement STD 213, etc., and any amendments thereto;
- c) Special Provisions;
- d) Statement of Work, including any specifications incorporated by reference herein; and

- e) all other attachments incorporated in the Contract by reference.

11. PACKING AND SHIPMENT:

- a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - (i) show the number of the container and the total number of containers in the shipment; and
 - (ii) the number of the container in which the packing sheet has been enclosed.
- b) All shipments by Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.

12. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES: No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.

- a) Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
- c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

13. DELIVERY: Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.

14. SUBSTITUTIONS: Substitution of Deliverables may not be tendered without advance written consent of the Buyer. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.

15. INSPECTION, ACCEPTANCE AND REJECTION: Unless otherwise specified in the Statement of Work:

- a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Contract.

- b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.
- c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) All Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
- e) The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. If the State does not provide such notice of rejection within thirty (30) days of delivery, such Deliverables and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.

16. SAMPLES:

- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
- b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.

17. WARRANTY:

- a) Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. Contractor warrants that
 - (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and
 - (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
- b) Contractor warrants that Deliverables furnished hereunder
 - (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and
 - (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, Contractor will, upon the State's request, provide a master copy of the Software for comparison and correction.
- c) Unless otherwise specified in the Statement of Work:
 - (i) Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
 - (ii) Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by Contractor, (B) use of Software in combination with or on products other than as specified by Contractor, or (C) misuse by the State.

- (iii) Where Contractor resells Hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor will pass through any such warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth above.
 - d) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
 - e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and Contractor's sole obligation will be limited to:
 - (i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
 - (ii) (ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e)(ii) above will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."
 - f) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 18. SAFETY AND ACCIDENT PREVENTION:** In performing work under this Contract on State premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.
- 19. INSURANCE:** When performing work on property in the care, custody or control of the State, Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the Contract. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the Buyer, the Contractor may be required to have the State shown as an "additional insured" on selected policies.
- 20. FORCE MAJEURE** Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:
- a) Acts of God or of the public enemy, and
 - b) Acts of the federal or State government in either its sovereign or contractual capacity. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.
- 21. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:**
- a) In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.

- b) In addition to any other rights and remedies the State may have, the State may require Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
- c) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor (but subject to the clause entitled "Limitation of Liability").
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.

22. LIMITATION OF LIABILITY:

- a) Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to two times the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.
- b) The foregoing limitation of liability shall not apply
 - (i) to liability under the General Provisions, entitled "Patent, Copyright, and Trade Secret Protection" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights;
 - (ii) to claims covered by any specific provision herein calling for liquidated damages;
 - (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; or
 - (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.
- c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- d) In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except
 - (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or
 - (ii) to the extent that Contractor's liability for such damages arises out of sub-section b)(i), b)(ii), or b)(iv) above.

23. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
- b) Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.

24. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or

the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

- a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that
 - (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability);
 - (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and
 - (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

25. **INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.
26. **REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after
 - (i) the date of acceptance of Deliverables or performance of services; or
 - (ii) receipt of an undisputed invoice, whichever is later.
27. **TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.
28. **NEWLY MANUFACTURED GOODS:** All Goods furnished under this Contract shall be newly manufactured Goods; used or reconditioned Goods are prohibited, unless otherwise specified.
29. **CONTRACT MODIFICATION:** No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.
30. **CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor'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, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is

independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.

31. NEWS RELEASES: Unless otherwise exempted, news releases pertaining to this Contract shall not be made without prior written approval of the Department of General Services.

32. DOCUMENTATION:

a) The Contractor agrees to provide to the State, at no charge, a number of all nonproprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.

b) If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.

33. RIGHTS IN WORK PRODUCT:

a) All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this subsection a) may be revised in a Statement of Work.

b) Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials.

c) The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.

d) The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the State may be used by either party without obligation of notice or accounting.

e) This Contract shall not preclude the Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.

34. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA:

- a) State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act.
- b) The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- c) The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

35. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:

- a) Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section 36a). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State. Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section 36a) will be conditional upon the following:
 - (i) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
 - (ii) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that
 - i. when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability);
 - ii. the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and
 - iii. the State will reasonably cooperate in the defense and in any related settlement negotiations.
- b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c) Should the Deliverables or Software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the Deliverables or Software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables or Software by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables or Software and make every reasonable effort to assist the State in procuring substitute Deliverables or Software. If, in the sole opinion of the State, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables or Software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.

- d) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
 - (i) The combination or utilization of Deliverables furnished hereunder with Equipment or devices not made or furnished by the Contractor; or,
 - (ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
 - (iii) The modification by the State of the Equipment furnished hereunder or of the Software; or
 - (iv) The combination or utilization of Software furnished hereunder with non-contractor supplied Software.
 - e) Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.
- 36. EXAMINATION AND AUDIT:** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting Documentation pertaining to performance of this Contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.
- 37. STOP WORK:**
- a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 90 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
 - (i) Cancel the Stop Work Order; or
 - (ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
 - b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
 - (i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
 - (ii) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
 - c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
 - d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.
- 38. PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the

Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

- 39. COVENANT AGAINST GRATUITIES:** The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
- 40. NONDISCRIMINATION CLAUSE:**
- a) During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 - b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.
- 41. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.
- 42. ASSIGNMENT OF ANTITRUST ACTIONS:** Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:
- a) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
 - b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
 - c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and

- (i) the assignee has not been injured thereby, or
- (ii) the assignee declines to file a court action for the cause of action.

- 43. DRUG-FREE WORKPLACE CERTIFICATION:** The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - (i) the dangers of drug abuse in the workplace;
 - (ii) the person's or organization's policy of maintaining a drug-free workplace;
 - (iii) any available counseling, rehabilitation and employee assistance programs; and,
 - (iv) penalties that may be imposed upon employees for drug abuse violations.
 - c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
 - (i) will receive a copy of the company's drug-free policy statement; and,
 - (ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.
- 44. FOUR-DIGIT DATE COMPLIANCE:** Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.
- 45. SWEATFREE CODE OF CONDUCT:**
- a) Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
 - b) Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).
- 46. RECYCLING:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205).
- 47. CHILD SUPPORT COMPLIANCE ACT:** For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:
- a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with

earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and

- b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

- 48. **AMERICANS WITH DISABILITIES ACT:** Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).
- 49. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** The Contractor 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. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
- 50. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.
- 51. **EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1, and is eligible to contract with the State.
- 52. **DOMESTIC PARTNERS:** For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that the contractor is in compliance with Public Contract Code Section 10295.3.
- 53. **SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:**
 - a) If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
 - b) If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department:
 - (i) the total amount the prime Contractor received under the Contract;
 - (ii) the name and address of the DVBE(s) that participated in the performance of the Contract;
 - (iii) the amount each DVBE received from the prime Contractor;
 - (iv) that all payments under the Contract have been made to the DVBE; and
 - (v) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)
- 54. **LOSS LEADER:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code.

CCHCS SPECIAL PROVISIONS

1. ACCOUNTING PRINCIPLES

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

2. SUBCONTRACTOR/CONSULTANT INFORMATION

Contractor is required to identify all subcontractors who will perform labor or render services in the performance of the Agreement. Additionally, the Contractor shall notify the CCHCS, DCIO, within ten (10) working days, of any changes to the subcontractor and/or consultant information.

3. EMPLOYMENT OF EX-OFFENDERS

- a. Contractor cannot and will not either directly, or via a subcontracted consultant and/or firm, employ in connection with this Agreement:
 - (1) Ex-Offenders on active parole or probation;
 - (2) 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
 - (3) Any ex-felon in a position which provides direct supervision of parolees.
- b. Ex-Offenders who can provide written evidence of having satisfactorily completed parole or probation may be considered for employment by the Contractor subject to the following limitations:
 - (1) Contractor shall obtain the prior written approval to employ any such ex-offender from the Authorized Administrator; and
 - (2) 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.

4. LICENSES AND PERMITS

The Contractor shall be an individual or firm licensed to do business in California and shall obtain at Contractor'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, Contractor agrees to provide the CCHCS with a copy of the renewed license(s) and/or permit(s) within thirty (30) days following the expiration date. In the event the

Contractor 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.

5. CONFLICT OF INTEREST

The Contractor 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. *Contractors and Their Employees*

Consultant Contractors 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 Contractors and/or certain of their employees may be required to file a Form 700 if so requested by the CCHCS or whenever it appears that a conflict of interest may be at issue. Generally, service Contractors (other than consultant Contractors 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 CDCR as one where there is a greater likelihood that a conflict of interest may occur;
- (2) The Contractor and/or Contractor's employee(s), pursuant to the Agreement, makes or influences a governmental decision; or
- (3) The Contractor and/or Contractor's employee(s) serves in a staff capacity with the CDCR and in that capacity participates in making a governmental decision or performs the same or substantially all the same duties for the CDCR that would otherwise be performed by an individual holding a position specified in the CDCR'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 Contractor with any state agency to provide goods or services.

(3) In addition to the above, CDCR 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 Contractor shall avoid any conflict of interest whatsoever with respect to any financial dealings, employment services, or opportunities offered to inmates or parolees. The Contractor 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 CDCR. In addition, the Contractor 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 CDCR. 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 Contractor, or which is wholly or partially owned (more than 5% ownership) or controlled (any percentage) by the Contractor or by the Contractor'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 Contractor or by the Contractor's owners, officers, principals, directors and/or shareholders.

The Contractor 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 Contractor shall have a continuing duty to keep the State timely and fully apprised in writing of any material changes in the Contractor'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 Contractor's business status or structure that could affect the performance of the Contractor's duties under the Agreement.

If the Contractor violates any provision of the above paragraphs, such action by the Contractor 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.

6. DISCLOSURE

Neither the State nor any State employee will be liable to the Contractor or its staff for injuries inflicted by inmates or parolees of the State. The State agrees to disclose to the Contractor 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 Contractor in disclosing such statement(s) to the State.

7. SECURITY CLEARANCE/FINGERPRINTING

The State reserves the right to conduct fingerprinting and/or security clearance through the California 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 Contractor and/or Contractor's employees' access to State premises. The State further reserves the right to terminate the Agreement should a threat to security be determined.

8. NOTIFICATION OF PERSONNEL CHANGES

Contractor 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, Contractor must recover and return any State-issued identification card provided to Contractor's employee(s) upon their departure or termination.

9. NON ELIGIBLE ALIEN CERTIFICATION

By signing this Agreement Contractor certifies, under penalty of perjury, that Contractor, 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.

The following provisions apply to services provided on departmental and/or institution grounds:

10. BLOODBORNE PATHOGENS

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

11. TUBERCULOSIS (TB) TESTING

In the event that the services required under this Agreement will be performed within a CDCR institution/parole office/community based program, prior to the performance of contracted duties, Contractors 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 CDCR. Regular contact is defined as having contact with inmates/parolees in confined quarters more than once a week.

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

12. PRIMARY LAWS, RULES, AND REGULATIONS REGARDING CONDUCT AND ASSOCIATION WITH STATE PRISON INMATES

Individuals who are not employees of the California Department of Corrections and Rehabilitation (CDCR), but who are working in and around inmates who are incarcerated within California's institutions/facilities or camps, are to be apprised of the laws, rules and regulations governing conduct in associating with prison inmates. The following is a summation of pertinent information when non-departmental employees come in contact with prison inmates.

By signing this contract, the Contractor agrees that if the provisions of the contract require the Contractor to enter an institution/facility or camp, the Contractor and any employee(s) and/or subcontractor(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, 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

- 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 are 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

13. CLOTHING RESTRICTIONS

While on institution grounds, Contractor and all its agents, employees, and/or representatives shall be professionally and appropriately dressed in clothing distinct from that worn by inmates at the institution. Specifically, blue denim pants and blue chambray shirts, orange/red/yellow/white/chartreuse jumpsuits and/or yellow rainwear shall not be worn onto institution grounds, as this is inmate attire. The Contractor should contact the institution regarding clothing restrictions prior to requiring access to the institution to assure the Contractor and their employees are in compliance.

14. TOBACCO-FREE ENVIRONMENT

Pursuant to Penal Code Section 5030.1, the use of tobacco products by any person on the grounds of any institution or facility under the jurisdiction of the Department of Corrections and Rehabilitation is prohibited.

15. SECURITY REGULATIONS

- a. Unless otherwise directed by the entrance gate officer and/or Contract Manager, the Contractor, Contractor's employees and subcontractors shall enter the institution through the main entrance gate and park private and nonessential vehicles in the designated visitor's parking lot. Contractor, Contractor's employees and subcontractors shall remove the keys from the ignition when outside the vehicle and all unattended vehicles shall be locked and secured while on institution grounds.
- b. Any State- and Contractor-owned equipment used by the Contractor for the provision of contract services, shall be rendered temporarily inoperative by the Contractor when not in use, by locking or other means unless specified otherwise.
- c. In order to maintain institution safety and security, periodic fire prevention inspections and site searches may become necessary and Contractor must furnish keys to institutional

authorities to access all locked areas on the worksite. The State shall in no way be responsible for Contractor's loss due to fire.

- d. Due to security procedures, the Contractor, Contractor's employees and subcontractors may be delayed at the institution vehicle/pedestrian gates and sally ports. Any loss of time checking in and out of the institution gates and sally ports shall be borne by the Contractor.
- e. Contractor, Contractor's employees and subcontractors shall observe all security rules and regulations and comply with all instructions given by institutional authorities.
- f. Electronic and communicative devices such as pagers, cell phones and cameras/microcameras are not permitted on institution grounds.
- g. Contractor, Contractor's employees and subcontractors shall not cause undue interference with the operations of the institution.
- h. No picketing is allowed on State property.

16. GATE CLEARANCE

Contractor and Contractor's employee(s) and/or subcontractors(s) must be cleared prior to providing services. The Contractor 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. CDCR uses the Request for Gate Clearance to run a California Law Enforcement Telecommunications System (CLETS) check. The check will include a California 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.

17. BUSINESS ASSOCIATE AGREEMENT

The awarded Contractor will be required meet provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA") and the regulations promulgated thereunder. The Business Associate Agreement can be located at the link below:

http://www.cdcr.ca.gov/Divisions_Boards/Plata/HIPPA_ExhibitG.html.

18. 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. CCHCS electronic data stored upon any Provider device must be returned to the CCHCS immediately and the vendor must certify that CCHCS data is either removed from the Providers devices by degaussing or shredding per National Institute of Standards and Technology (NIST) Special Publication Series 800-88 and National Industrial Security Program (NISP) Operating Manual (DOD 5220.22-M) and Clearing and Sanitization Matrix (C&SM) based on NSA/CSS Policy Manual 9-12, "Storage Device Declassification Manual".

MODEL CONTRACT

Attachment 3 - CCHCS Special Provisions

1. ACCOUNTING PRINCIPLES

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

2. SUBCONTRACTOR/CONSULTANT INFORMATION

Contractor is required to identify all subcontractors who will perform labor or render services in the performance of the Agreement. Additionally, the Contractor shall notify the CCHCS, DCIO, within ten (10) working days, of any changes to the subcontractor and/or consultant information.

3. EMPLOYMENT OF EX-OFFENDERS

a. Contractor cannot and will not either directly, or via a subcontracted consultant and/or firm, employ in connection with this Agreement:

- (1) Ex-Offenders on active parole or probation;
- (2) 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
- (3) Any ex-felon in a position which provides direct supervision of parolees.

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

- (1) Contractor shall obtain the prior written approval to employ any such ex-offender from the Authorized Administrator; and
- (2) 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.

4. LICENSES AND PERMITS

The Contractor shall be an individual or firm licensed to do business in California and shall obtain at Contractor'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, Contractor agrees to provide the CCHCS with a copy of the renewed

license(s) and/or permit(s) within thirty (30) days following the expiration date. In the event the

Contractor 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.

5. CONFLICT OF INTEREST

The Contractor 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. Contractors and Their Employees

Consultant Contractors 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 Contractors and/or certain of their employees may be required to file a Form 700 if so requested by the CCHCS or whenever it appears that a conflict of interest may be at issue. Generally, service Contractors (other than consultant Contractors 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 CDCR as one where there is a greater likelihood that a conflict of interest may occur;
- (2) The Contractor and/or Contractor's employee(s), pursuant to the Agreement, makes or influences a governmental decision; or
- (3) The Contractor and/or Contractor's employee(s) serves in a staff capacity with the CDCR and in that capacity participates in making a governmental decision or performs the same or substantially all the same duties for the CDCR that would otherwise be performed by an individual holding a position specified in the CDCR'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 Contractor with any state agency to provide goods or services.

- (3) In addition to the above, CDCR 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 Contractor shall avoid any conflict of interest whatsoever with respect to any financial dealings, employment services, or opportunities offered to inmates or parolees. The Contractor 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 CDCR. In addition, the Contractor 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 CDCR. 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 Contractor, or which is wholly or partially owned (more than 5% ownership) or controlled (any percentage) by the Contractor or by the Contractor'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 Contractor or by the Contractor's owners, officers, principals, directors and/or shareholders.

The Contractor 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 Contractor shall have a continuing duty to keep the State timely and fully apprised in writing of any material changes in the Contractor'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 Contractor's business status or structure that could affect the performance of the Contractor's duties under the Agreement.

If the Contractor violates any provision of the above paragraphs, such action by the Contractor 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.

6. DISCLOSURE

Neither the State nor any State employee will be liable to the Contractor or its staff for injuries inflicted by inmates or parolees of the State. The State agrees to disclose to the Contractor 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 Contractor in disclosing such statement(s) to the State.

7. SECURITY CLEARANCE/FINGERPRINTING

The State reserves the right to conduct fingerprinting and/or security clearance through the California 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 Contractor and/or Contractor's employees' access to State premises. The State further reserves the right to terminate the Agreement should a threat to security be determined.

8. NOTIFICATION OF PERSONNEL CHANGES

Contractor 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, Contractor must recover and return any State-issued identification card provided to Contractor's employee(s) upon their departure or termination.

9. NON ELIGIBLE ALIEN CERTIFICATION

By signing this Agreement Contractor certifies, under penalty of perjury, that Contractor, 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.

The following provisions apply to services provided on departmental and/or institution grounds:

10. BLOODBORNE PATHOGENS

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

11. TUBERCULOSIS (TB) TESTING

In the event that the services required under this Agreement will be performed within a CDCR institution/parole office/community based program, prior to the performance of contracted duties, Contractors 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 CDCR. Regular contact is defined as having contact with inmates/parolees in confined quarters more than once a week.

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

12. PRIMARY LAWS, RULES, AND REGULATIONS REGARDING CONDUCT AND ASSOCIATION WITH STATE PRISON INMATES

Individuals who are not employees of the California Department of Corrections and Rehabilitation (CDCR), but who are working in and around inmates who are incarcerated within California's institutions/facilities or camps, are to be apprised of the laws, rules and regulations governing conduct in associating with prison inmates. The following is a summation of pertinent information when non-departmental employees come in contact with prison inmates.

By signing this contract, the Contractor agrees that if the provisions of the contract require the Contractor to enter an institution/facility or camp, the Contractor and any

employee(s) and/or subcontractor(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, 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

- 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 are 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

13. CLOTHING RESTRICTIONS

While on institution grounds, Contractor and all its agents, employees, and/or representatives shall be professionally and appropriately dressed in clothing distinct from that worn by inmates at the institution. Specifically, blue denim pants and blue chambray shirts, orange/red/yellow/white/chartreuse jumpsuits and/or yellow rainwear shall not be worn onto institution grounds, as this is inmate attire. The Contractor should contact the institution regarding clothing restrictions prior to requiring access to the institution to assure the Contractor and their employees are in compliance.

14. TOBACCO-FREE ENVIRONMENT

Pursuant to Penal Code Section 5030.1, the use of tobacco products by any person on the grounds of any institution or facility under the jurisdiction of the Department of Corrections and Rehabilitation is prohibited.

15. SECURITY REGULATIONS

- a. Unless otherwise directed by the entrance gate officer and/or Contract Manager, the Contractor, Contractor's employees and subcontractors shall enter the institution through the main entrance gate and park private and nonessential vehicles in the designated visitor's parking lot. Contractor, Contractor's employees and subcontractors shall remove the keys from the ignition when outside the vehicle and all unattended vehicles shall be locked and secured while on institution grounds.

- b. Any State- and Contractor-owned equipment used by the Contractor for the provision of contract services, shall be rendered temporarily inoperative by the Contractor when not in use, by locking or other means unless specified otherwise.
- c. In order to maintain institution safety and security, periodic fire prevention inspections and site searches may become necessary and Contractor must furnish keys to institutional authorities to access all locked areas on the worksite. The State shall in no way be responsible for Contractor's loss due to fire.
- d. Due to security procedures, the Contractor, Contractor's employees and subcontractors may be delayed at the institution vehicle/pedestrian gates and sally ports. Any loss of time checking in and out of the institution gates and sally ports shall be borne by the Contractor.
- e. Contractor, Contractor's employees and subcontractors shall observe all security rules and regulations and comply with all instructions given by institutional authorities.
- f. Electronic and communicative devices such as pagers, cell phones and cameras/microcameras are not permitted on institution grounds.
- g. Contractor, Contractor's employees and subcontractors shall not cause undue interference with the operations of the institution.
- h. No picketing is allowed on State property.

16. GATE CLEARANCE

Contractor and Contractor's employee(s) and/or subcontractors(s) must be cleared prior to providing services. The Contractor 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. CDCR uses the Request for Gate Clearance to run a California Law Enforcement Telecommunications System (CLETS) check. The check will include a California 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.

17. BUSINESS ASSOCIATE AGREEMENT

The awarded Contractor will be required meet provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA") and the regulations promulgated thereunder. The Business Associate Agreement can be located at the link below:

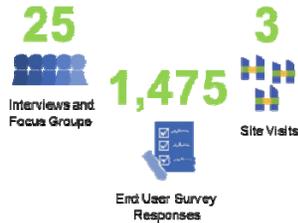
http://www.cdcr.ca.gov/Divisions_Boards/Plata/HIPPA_ExhibitG.html.

18. 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. CCHCS electronic data stored upon any Provider device must be returned to the CCHCS immediately and the vendor must certify that CCHCS data is either removed from the Providers devices by degaussing or shredding per National Institute of Standards and Technology (NIST) Special Publication Series 800-88 and National Industrial Security Program (NISP) Operating Manual (DOD 5220.22-M) and Clearing and Sanitization Matrix (C&SM) based on NSA/CSS Policy Manual 9-12, "Storage Device Declassification Manual".

Attachment 4 – Correctional Care Model Current State

Current State Analysis



- ✓ Medical
- ✓ Mental Health
- ✓ Dental
- ✓ Nursing
- ✓ Health Records
- ✓ Pharmacy
- ✓ Lab
- ✓ Radiology
- ✓ Scheduling
- ✓ IT

Current State Assessment

Clinical and Health Records Processes

Clinical Applications and Technical Infrastructure

Clinical Implications	Correctional Setting Implications	Technical Implications
<ul style="list-style-type: none"> ✓ Scheduling of appointments in a single system across all disciplines including Medical, Mental Health, and Dental would allow for more cohesive and efficient care ✓ Electronic summary of patient information for Clinical Staff review, such as active problems, medication lists, allergies, encounter/services history, etc will allow for better quality care ✓ Wide process variances across sites will make implementation of an EMR more challenging, and may extend the time for the implementation ✓ Current laboratory systems will need to be to a single system, and/or transitioned to outsourced lab services, for improved integration with the EMR ✓ Robust reporting capabilities and access to data across all facilities will improve physicians' efficiency and patient care ✓ Telemedicine could benefit by physicians having remote access to the future EMR 	<ul style="list-style-type: none"> ✓ Financial success and efficiencies resulting from a comprehensive electronic patient chart spanning medical, dental, and mental health will promote attraction and retainment of quality staff ✓ Capabilities for real-time patient location information, transfer history, and alerts regarding scheduled care events will enhance patient care ✓ Viewing and/or integrating data from outside sources (such as county and city jails, DMH, local hospitals, local specialists including telemedicine physicians) will streamline the intake process ✓ Tracking capabilities for the review and follow-up on lab results will reduce costs associated with duplicate testing ✓ Work queues for non-CCHCS referrals, including approvals, scheduling, and monitoring will support maximized patient tracking and transport of patients 	<ul style="list-style-type: none"> ✓ Investment in modernizing technical infrastructure will need to be maintained to create a very high up-time environment ✓ Availability of the integrated EMR on easily accessed technology will promote greater utilization by staff ✓ Pharmacy system inclusive of allergies, patient medication lists, provider order entry and medication dispensing cabinets would require more extensive support staffing ✓ The RIS/PACS solution will need to be fully implemented, and robustly integrated with any future EMR ✓ Integration of dental functionality is likely to be beyond most commercially available EMRs – it is common to purchase a niche system for this usage and then to build interfaces of key data with the main EMR

Current State EMR Implications – Correctional Care Model

Clinical Area	Current State CCHCS Model	Implications to Future EMR
General	<ul style="list-style-type: none"> • Integrated medical, dental, and mental health patient care • Inmate care requiring primarily an outpatient system, with components for inpatient and SNF care 	<ul style="list-style-type: none"> • Chart information needs to span key elements across medical, dental, and mental health • Capabilities for real-time patient location information, transfer history, and alerts regarding scheduled care events
Patient Access	<ul style="list-style-type: none"> • Healthcare related scheduling must coincide with schedules maintained by Custody • Inmate demographics provided by Custody (although limited data is provided) 	<ul style="list-style-type: none"> • Integrated scheduling that will receive non-healthcare scheduling details from Custody • Integration with an Offender Management System for robust patient demographics
Provider Assessment	<ul style="list-style-type: none"> • Fluid inmate population, due to lots of transfers, with large variety of patient care needs • Most specialty care provided by non-CCHCS providers 	<ul style="list-style-type: none"> • Viewing and/or integrating data from outside sources (such as county and city jails, DMH, local hospitals, local specialists including telemedicine physicians) • Provide non-CCHCS providers access to patient clinical data (when appropriate)
Orders/Results Review	<ul style="list-style-type: none"> • Providers must review and act upon lab results within an establish timeframe 	<ul style="list-style-type: none"> • Alerts/Work queues for lab results • Tracking capabilities for the review and follow-up on lab results
Medication Management	<ul style="list-style-type: none"> • Pharmacy Tech/Pharmacist enters medication orders that are verified by a Pharmacist and the Ordering Provider • Nursing Staff administer medications 3 – 4 times per day in various care settings 	<ul style="list-style-type: none"> • Pharmacist review capabilities for medication orders • Medication administration capabilities, including dynamic MAR
Care Coordination	<ul style="list-style-type: none"> • Referrals to non-CCHCS Providers require involvement of a Utilization Management Nurse and approval from Headquarters and Chief Medical Executive 	<ul style="list-style-type: none"> • Work queues for non-CCHCS referrals, including approvals, scheduling, and monitoring

Attachment 5 – Application Assessment

Application	Assessment	Implications to Future EMR
Care360	<ul style="list-style-type: none"> Lacks automatic integration and standardization of lab results and requires extra staff to process paper 	<ul style="list-style-type: none"> Integrated lab ordering and results are essential for an EMR, which is supported by consistency in lab vendor relationship
Dictation/Transcription	<ul style="list-style-type: none"> System use is not mandatory, thus not taking advantage of the centralized transcription staff 	<ul style="list-style-type: none"> Consistent use of Dictation/Transcription system is will be a necessity for an EMR,
Digital Signature	<ul style="list-style-type: none"> Digital signature provides workflow improvements for the dictation/transcription process 	<ul style="list-style-type: none"> Future EMR should include Digital Signature as a component
eUHR	<ul style="list-style-type: none"> eUHR is not a long-term solution as it does not provide the ability to capture and report on discrete patient information 	<ul style="list-style-type: none"> Back-file scanning could be continued to supplement the data that would be found in a future EMR
RadNet	<ul style="list-style-type: none"> Separate application that is not integrated with other CCHCS applications 	<ul style="list-style-type: none"> Radiology results and images need to be integrated with provider documentation capabilities
HCSS	<ul style="list-style-type: none"> Lacks robust, integrated scheduling capabilities across all disciplines 	<ul style="list-style-type: none"> Schedule and encounter tracking capabilities must be integrated into an EMR
GuardianRx	<ul style="list-style-type: none"> GuardianRx lacks automatic integration of medication ordering and requires extra staff to enter paper-based orders 	<ul style="list-style-type: none"> Pharmacy system must support integration of allergies, patient medication lists, provider order entry, and medication dispensing cabinets
MHTS	<ul style="list-style-type: none"> Deemed an interim solution until integrated scheduling system is developed that meets the business rules for Mental Health 	<ul style="list-style-type: none"> Integrated scheduling with Medical and Dental will be required to support efficient patient care
IDTD	<ul style="list-style-type: none"> Current system is an interim solution to incorporate dental policies into patient scheduling and tracking 	<ul style="list-style-type: none"> Dental requirements for care plan tracking must be included in a future solution
Telemedicine	<ul style="list-style-type: none"> Provides interim tracking of Telemedicine services only 	<ul style="list-style-type: none"> Future EMR solution must provide integrated functionality for scheduling and tracking Telemedicine services
RIS/PACS	<ul style="list-style-type: none"> RIS/PACS solution was selected based on currently known requirements; it is currently in the initial planning phases CCHCS utilizes offsite Radiology review services 	<ul style="list-style-type: none"> Verify that PACS will integrate with a future EMR solution RIS/PACS solution within the EMR must accommodate offsite Radiology review and reporting
Dental Imaging	<ul style="list-style-type: none"> Dental has expressed the desire for an improved imaging solution that will be accessible within all facilities 	<ul style="list-style-type: none"> Future EMR solution needs to provide a dental imaging component that integrates with dental documentation

Application	Future EMR	Analysis
Madrid Patient Information Management System (MPIMS)		MPIMS is an interim EMR for Pelican Bay based on Cormedica with an Oracle database backend. CCHCS' future EMR deployment will include all change management for Pelican Bay health care staff and conversion from MPIMS to the new solution.
Care360		Quest provides web-based access to lab results. There is apparent lack of integration with in-house labs and documentation requires extra staff to process. Quest interfaces to EMRs are common at external health providers. Quest may continue lab services with the integration of an EMR solution while consolidating other lab CCHCS lab solutions.
eUHR		Facilities report minimal efficiency or patient care gains with eUHR. CCHCS' eUHR relies on paper-base scanning only – no direct entry of data by clinicians. eUHR may be used as a scanning system for paper based records not integrated into the EMR solution.
GuardianRx		CCHCS' GuardianRx system has had significant modifications and add-ons for correctional pharmacy and medication administration needs. There is currently minimal real-time functionality for medication administration because it primarily serves as an orders and dispensing system front-end.
IDTD		Highly customized for dental scheduling, tracking, and treatment plan needs. Duplicative processes required as HCSS is deployed further. Currently, it has minimal-to-no integration at facilities. To be replaced by integrated scheduling across medical, mental and dental health programs.
MHTS		Highly customized for mental health scheduling and tracking needs; Duplicative processes required as HCSS is deployed further. To be replaced by integrated scheduling across medical, mental and dental health programs.
Dictation/Transcription		Increasingly utilized as electronic signature is deployed. Available for clinical staff dictation in all care settings. Integration of a transcription system with an EMR may be required.
HCSS		Improved scheduling integration with CDCR's custody program. Provides link to clinical scheduling and encounters. Not currently designed nor positioned for mental health and dental usage. May be replaced by integrated scheduling across medical, mental and dental health programs. Integration of a transcription system with an EMR may be required.
RIS/PACS		RIS component can be utilized in isolation or integrated to EMR. PACS integration with EMR will be required regardless of selected future EMR solution.

-  Interim Solution
-  Use to define
-  Integrated into future

Attachment 6 – Technical Infrastructure Assessment

Technology	Assessment	Implications to Future EMR
WANs and LANs	<ul style="list-style-type: none"> • Legacy network is subject to anecdotal reports of unreliability; Not completely clear if outages are due to network or power issues 	<ul style="list-style-type: none"> • Complete back-up power, redundancy and disaster recovery initiatives • Anticipate increase in number of LAN drops in clinical areas at facilities to support EMR operations
Data Centers	<ul style="list-style-type: none"> • Some site specific applications are operated at individual facilities without enterprise data center support 	<ul style="list-style-type: none"> • Establish diverse disaster recovery data center • Incorporate robust operating model, roles and responsibilities and service level agreements in conjunction with transition to new data center
End-User Equipment	<ul style="list-style-type: none"> • Move to a full EMR will require additional access points for end users 	<ul style="list-style-type: none"> • Anticipate an increase the number of terminal devices required from the current level
Enterprise Architecture	<ul style="list-style-type: none"> • Applications in production do not utilize core architecture 	<ul style="list-style-type: none"> • Need to revisit the architecture and determine how to simplify and which components should be retained • These decisions will be driven by the degree to which the current direction is changed

Attachment 7 - CCHCS Correctional Infrastructure

I. Health Services Professions

The following professions will be the primary end-users of CCHCS' EMR solution:

1. Mental Health professions include:
 - a. Psychologists;
 - b. Psychiatrists;
 - c. Licensed Clinical Social Workers (LCSWs);
 - d. Licensed Psychiatric Technicians (LPTs);
 - e. Psychiatric Nurses;
 - f. Recreation Therapists; and
 - g. Occupational Therapists.
2. Laboratory professions include:
 - a. Laboratory Assistant;
 - b. Senior Laboratory Assistant;
 - c. Clinical Lab Technician/Scientist;
 - d. Senior Clinical Lab Technician; and
 - e. Supervising Clinical Lab Technician.
3. Pharmacy professions include:
 - a. Pharmacy Technician;
 - b. Pharmacist I/II; and
 - c. Pharmacy Services Manager
4. Radiology professions include:
 - a. Radiology Technologist;
 - b. Senior Radiology Technologist; and
 - c. Supervising Radiology Technologist.
5. Health Records professions include:
 - a. Medical Records Director;
 - b. Health Record Technician I/II;
 - c. Office Assistant; and
 - d. Office Technician.

II. Health Services Professions

The following shows all California adult correctional institutions for EMR deployment. (A new institution, California Health Care Facility [CHCF], in Stockton is scheduled to activate by December, 2013.)



Attachment 10 – General Provisions

1. **DEFINITIONS:** Unless otherwise specified in the Statement of Work the following terms shall be given the meaning shown, unless context requires otherwise.
- a) **“Acceptance Tests”** means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.
 - b) **“Application Program”** means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.
 - c) **“Attachment”** means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer, that is not connected by the Contractor.
 - d) **“Business entity”** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
 - e) **“Buyer”** means the State’s authorized contracting official.
 - f) **“Commercial Software”** means Software developed or regularly used that:
 - (i) has been sold, leased, or licensed to the general public;
 - (ii) has been offered for sale, lease, or license to the general public;
 - (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or
 - (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
 - g) **“Contract”** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
 - h) **“Custom Software”** means Software that does not meet the definition of Commercial Software.
 - i) **“Contractor”** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with “supplier”, “vendor” or other similar term.
 - j) **“Data Processing Subsystem”** means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent) and Operating Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
 - k) **“Data Processing System (System)”** means the total complement of Contractor-furnished Machines, including one or more central processors (or

instruction processors) and Operating Software, which are acquired to operate as an integrated group.

- l) "**Deliverables**" means Goods, Software, Information Technology, telecommunications technology, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
- m) "**Designated CPU(s)**" means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
- n) "**Documentation**" means nonproprietary manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Documentation only to the extent that such materials are described in or required by the Statement of Work.
- o) "**Equipment**" is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or subsystem, including its Hardware and Operating Software (if any).
- p) "**Equipment Failure**" is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.
- q) "**Facility Readiness Date**" means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.
- r) "**Goods**" means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
- s) "**Hardware**" usually refers to computer Equipment and is contrasted with Software. See also Equipment.
- t) "**Installation Date**" means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.
- u) "**Information Technology**" includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.
- v) "**Machine**" means an individual unit of a Data Processing System or subsystem, separately identified by a type and/or model number, comprised

of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.

- w) **"Machine Alteration"** means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
- x) **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
- y) **"Manufacturing Materials"** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
- z) **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.
- aa) **"Mean Time to Repair (MTTR)"** means the average expected or observed time required to repair a System or component and return it to normal operation.
- bb) **"Operating Software"** means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
- cc) **"Operational Use Time"** means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.
- dd) **"Performance Testing Period"** means a period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed Equipment and Software prior to its acceptance by the State.
- ee) **"Period of Maintenance Coverage"** means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- ff) **"Preventive Maintenance"** means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
- gg) **"Principal Period of Maintenance"** means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.

- hh) "**Programming Aids**" means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).
- ii) "**Program Product**" means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- jj) "**Remedial Maintenance**" means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
- kk) "**Site License**" means for each product, the term "Site License" shall mean the license established upon acquisition of the applicable number of copies of such product and payment of the applicable license fees as set forth in the Statement of Work.
- ll) "**Software**" means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
- mm) "**Software Failure**" means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
- nn) "**State**" means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
- oo) "**System**" means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
- pp) "**U.S. Intellectual Property Rights**" means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.

2. COMPLETE INTEGRATION: This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.

3. SEVERABILITY: The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

- 4. INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
- 5. APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
- 6. COMPLIANCE WITH STATUTES AND REGULATIONS:**
- a) Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
 - b) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
 - c) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that
 - (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability);
 - (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and
 - (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
 - d) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
 - e) To the extent that this contract falls within the scope of Government Code Section 11135, Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.
- 7. CONTRACTOR'S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.
- a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
 - b) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that

- (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability);
- (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and
- (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

8. ASSIGNMENT: This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.

9. WAIVER OF RIGHTS: Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

10. ORDER OF PRECEDENCE: In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

- a) these General Provisions (In the instances provided herein where the paragraph begins: "Unless otherwise specified in the Statement of Work" provisions specified in the Statement of Work replacing these paragraphs shall take precedence over the paragraph referenced in these General Provisions);
- b) Contract form, i.e., Purchase Order STD 65, Standard Agreement STD 213, etc., and any amendments thereto;
- c) Special Provisions;
- d) Statement of Work, including any specifications incorporated by reference herein; and
- e) all other attachments incorporated in the Contract by reference.

11. PACKING AND SHIPMENT:

- a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - (i) show the number of the container and the total number of containers in the shipment; and

- (ii) the number of the container in which the packing sheet has been enclosed.
- b) All shipments by Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.

12. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES: No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.

- a) Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
- c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

13. DELIVERY: Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.

14. SUBSTITUTIONS: Substitution of Deliverables may not be tendered without advance written consent of the Buyer. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.

15. INSPECTION, ACCEPTANCE AND REJECTION: Unless otherwise specified in the Statement of Work:

- a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Contract.
- b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.
- c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) All Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
- e) The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. If the State does not provide such notice of rejection within thirty (30) days of delivery, such Deliverables and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.

16. SAMPLES:

- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
- b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.

17. WARRANTY:

- a) Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. Contractor warrants that

- (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and
 - (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
- b) Contractor warrants that Deliverables furnished hereunder
 - (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and
 - (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, Contractor will, upon the State's request, provide a master copy of the Software for comparison and correction.
- c) Unless otherwise specified in the Statement of Work:
 - (i) Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
 - (ii) Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by Contractor, (B) use of Software in combination with or on products other than as specified by Contractor, or (C) misuse by the State.
 - (iii) Where Contractor resells Hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor will pass through any such warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth above.
- d) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
- e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and Contractor's sole obligation will be limited to:

- (i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
 - (ii) (ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e)(ii) above will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."
- f) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

18. SAFETY AND ACCIDENT PREVENTION: In performing work under this Contract on State premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

19. INSURANCE: When performing work on property in the care, custody or control of the State, Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the Contract. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the Buyer, the Contractor may be required to have the State shown as an "additional insured" on selected policies.

20. FORCE MAJEURE Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- a) Acts of God or of the public enemy, and
- b) Acts of the federal or State government in either its sovereign or contractual capacity. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.

21. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:

- a) In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.
- b) In addition to any other rights and remedies the State may have, the State may require Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
- c) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor (but subject to the clause entitled "Limitation of Liability").
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.

22. LIMITATION OF LIABILITY:

- a) Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to two times the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.
- b) The foregoing limitation of liability shall not apply
 - (i) to liability under the General Provisions, entitled "Patent, Copyright, and Trade Secret Protection" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights;
 - (ii) to claims covered by any specific provision herein calling for liquidated damages;
 - (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; or
 - (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.
- c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing

herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.

- d) In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except
 - (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or
 - (ii) to the extent that Contractor's liability for such damages arises out of subsection b)(i), b)(ii), or b)(iv) above.

23. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
- b) Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.

24. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

- a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that
 - (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability);

- (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and
- (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

- 25. INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.
- 26. REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after
- (i) the date of acceptance of Deliverables or performance of services; or
 - (ii) receipt of an undisputed invoice, whichever is later.
- 27. TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.
- 28. NEWLY MANUFACTURED GOODS:** All Goods furnished under this Contract shall be newly manufactured Goods; used or reconditioned Goods are prohibited, unless otherwise specified.
- 29. CONTRACT MODIFICATION:** No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.
- 30. CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor'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, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.

31. NEWS RELEASES: Unless otherwise exempted, news releases pertaining to this Contract shall not be made without prior written approval of the Department of General Services.

32. DOCUMENTATION:

a) The Contractor agrees to provide to the State, at no charge, a number of all nonproprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.

b) If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.

33. RIGHTS IN WORK PRODUCT:

a) All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this sub-section a) may be revised in a Statement of Work.

b) Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be

construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials.

- c) The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.
- d) The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the State may be used by either party without obligation of notice or accounting.
- e) This Contract shall not preclude the Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.

34. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA:

- a) State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act.
- b) The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- c) The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

35. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:

- a) Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service

provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section 36a). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State. Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section 36a) will be conditional upon the following:

- (i) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- (ii) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that
 - i. when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability);
 - ii. the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and
 - iii. the State will reasonably cooperate in the defense and in any related settlement negotiations.
- b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c) Should the Deliverables or Software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the Deliverables or Software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables or Software by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables or Software and make every reasonable effort to assist the State in procuring substitute Deliverables or Software. If, in the sole opinion of the State, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables or Software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.

- d) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
 - (i) The combination or utilization of Deliverables furnished hereunder with Equipment or devices not made or furnished by the Contractor; or,
 - (ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
 - (iii) The modification by the State of the Equipment furnished hereunder or of the Software; or
 - (iv) The combination or utilization of Software furnished hereunder with non-contractor supplied Software.
- e) Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

36. EXAMINATION AND AUDIT: Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting Documentation pertaining to performance of this Contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.

37. STOP WORK:

- a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 90 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
 - (i) Cancel the Stop Work Order; or
 - (ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall

resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:

- (i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
 - (ii) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
 - d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

38. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

39. COVENANT AGAINST GRATUITIES: The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

40. NONDISCRIMINATION CLAUSE:

- a) During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and

Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

41. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

42. ASSIGNMENT OF ANTITRUST ACTIONS: Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
 - (i) the assignee has not been injured thereby, or
 - (ii) the assignee declines to file a court action for the cause of action.

- 43. DRUG-FREE WORKPLACE CERTIFICATION:** The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - (i) the dangers of drug abuse in the workplace;
 - (ii) the person's or organization's policy of maintaining a drug-free workplace;
 - (iii) any available counseling, rehabilitation and employee assistance programs; and,
 - (iv) penalties that may be imposed upon employees for drug abuse violations.
 - c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
 - (i) will receive a copy of the company's drug-free policy statement; and,
 - (ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.
- 44. FOUR-DIGIT DATE COMPLIANCE:** Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.
- 45. SWEATFREE CODE OF CONDUCT:**
- a) Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
 - b) Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or

the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).

46. **RECYCLING:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205).
47. **CHILD SUPPORT COMPLIANCE ACT:** For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:
 - a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
 - b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
48. **AMERICANS WITH DISABILITIES ACT:** Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).
49. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** The Contractor 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. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
50. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.
51. **EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1, and is eligible to contract with the State.

52. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that the contractor is in compliance with Public Contract Code Section 10295.3.

53. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a) If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b) If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department:
 - (i) the total amount the prime Contractor received under the Contract;
 - (ii) the name and address of the DVBE(s) that participated in the performance of the Contract;
 - (iii) the amount each DVBE received from the prime Contractor;
 - (iv) that all payments under the Contract have been made to the DVBE; and
 - (v) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

54. LOSS LEADER: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 12104.5(b)).

Attachment 11 – Glossary

1. **Agreement** means Contract. A mutual understanding between the state and another entity, public or private about their rights and duties regarding the provision of goods or services. Agreement is used synonymously with Contract.
2. **Ambulance Service** means a ground, air or sea transport service for CDCR patient-inmates/youth to be transferred for medical related treatment.
3. **Authorized Administrator** means the person who has been given full authority to grant prior authorization for the delivery of health care services rendered to CDCR patient-inmates/youth.
4. **California Code of Regulations (CCR), Title 15** means the regulations that authorize the Director of the California Department of Corrections and Rehabilitation to contract for the provision of CDCR inmate/youth health care.
5. **California Department of Corrections and Rehabilitation (CDCR)** means the State of California Department of Corrections and Rehabilitation, authorized by Penal Code, Section 5000 et seq., and the CCR, Title 15, to maintain the custody and care of California's institutionalized public offenders.
6. **California Confidentiality of Medical Information Act (CMIA)** means the act that requires authorization from a patient to disclose medical information and defines terms in reference to the release of medical information. The CMIA is fully defined in Civil Code 56-56.16.
7. **California Correctional Health Care Services (CCHCS)** means the entity responsible for health care treatment, performance and decisions within CDCR's institutions for patient-inmates.
8. **California Division of Juvenile Justice (DJJ)** formerly known as California Youth Authority (CYA), is a division within the California Department of Corrections and Rehabilitation that provides a range of training and treatment services for Youth.
9. **California Victim Compensation and Government Claims Board** means the State Board whose function is to resolve all claims for money or damages filed against State agencies under Government Code Section 900 et seq., before a lawsuit against a State agency can be pursued.
10. **Camp** means the type of subfacility of an institution which is normally located in a rural area and which has no secured (fenced or walled) perimeter.
11. **CDCR Medical Standards of Care** means the official CDCR health care policy document used by the CDCR Chief Executive Office (CEO), Chief Medical Executive (CME), Chief Medical Office (CMO) and Health Care Managers (HCM) and others to distinguish the parameters of the delivery of health care services and treatment to the State of California CDCR patient-inmates/youth.
12. **CEO** means Chief Executive Officer.

13. **CME** means Chief Medical Executive.
14. **CMO** means Chief Medical Officer.
15. **Community Health Facility** means any facility, place or building which is organized, maintained and operated for the diagnosis, care, prevention and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, and to which the persons are admitted for a 24-hour stay or longer per Health and Safety Code, Division 2, Chapter 2, Article 1, Section 1250.
16. **Consultant** means a provider of services of an advisory nature, who provides a recommended course of action or personal expertise.
17. **Contract** Please see definition for Agreement.
18. **Contractor** means a party contracting with CDCR; the person or company providing services via a contractual arrangement. For the purposes of this Agreement, "Contractor" is used synonymously with "Vendor".
19. **Correctional Treatment Center** means a health facility with a specified number of beds within a State prison, county jail or DJJ facility designated to provide health care to that portion of the CDCR inmate/youth population not requiring general acute care level of services, but who are in need of professionally supervised health care beyond that normally provided in the community on an outpatient basis (CCR, Title 22, Division 5, Chapter 12, Article 1, Section 79516).
20. **Credentialing** means the process used to validate professional licensure, clinical experience, and preparation for specialty practice. Health care professionals must have credentialing process approved by a credentialing verification unit in order to be hired and before they are granted specific patient-inmate/youth care privileges.
21. **Day** means calendar day, unless otherwise specified.
22. **Designee** means a person who has been appointed to perform a duty or carry out a specific role.
23. **Discharge Summary** means a brief recapitulation of significant findings and events of the patient's hospitalization, patient's condition on discharge and the recommendations and arrangements for future care (CCR, Title 22, Division 5, Licensing and Certification of Health Facilities, Home Health Agencies, Clinics, and Referral Agencies, Chapter 1, Article 7, Section 70749).
24. **Division of Adult Institutions (DAI)** means the division responsible for the management and operation of 33 adult institutions, 39 conservation camps, and 13 Community Correctional Facilities
25. **Emergency Care Services** means the immediate care or treatment necessary to prevent death, severe or permanent disability or to alleviate severe pain, including medically necessary crisis intervention for CDCR patient-inmates/youth suffering from situational crisis or acute episodes of mental illness, in accordance with CCR, Title 15.

26. **Ex-Offender** means a person previously convicted of a felony in California or any other state, or convicted of an offense in another state which would have been a felony if committed in California.
27. **Experimental or Investigational Treatment** means any treatment, therapy, procedure, drug or drug usage, facility or facility usage, equipment or equipment usage, device or device usage, or supplies which are not recognized as being in accord with generally accepted professional medical standards, or as being safe and effective for use in the treatment of an illness, injury, or condition at issue. Services which require approval by the federal government or any agency thereof, or by any state governmental agency prior to use, and where such approval has not been granted at the time the services were rendered, shall be considered experimental or investigational. Services which themselves are not approved or recognized as being in accord with accepted professional medical standards, but nevertheless are authorized by law or a governmental agency for use in testing, trials, or other studies on human patients, shall be considered experimental or investigational.
28. **Fiscal Year** means the accounting period from July 1 through June 30 of the following year.
29. **HCM** means Health Care Manager.
30. **Health Care Review Subcommittee** means the appointed CDCR officials authorized to review and approve health care services which are excluded from the CDCR Medical Standards of Care Policy.
31. **Health Care Services** means medical care provided to CDCR patient-inmates/youth which includes medical, mental health and dental services.
32. **Health Care Service Provider** means entity providing medical services to CDCR patient-inmates/youth through a Preferred Provider Network.
33. **HIPAA** means Health Insurance Portability and Accountability Act.; a US law designed to provide privacy standards to protect patients' medical records and other health information provided to health plans, doctors, hospitals and other health care providers.
34. **HITECH ACT** means Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH ACT), enacted as part of the **American Recovery and Reinvestment Act of 2009**, and addresses the privacy and security concerns associated with the electronic transmission of health information.
35. **Hospital** means an institution which is licensed under all applicable State and local laws and regulations to provide diagnostic and therapeutic services for the medical diagnosis, treatment and care of injured, disabled or sick persons in need of acute inpatient medical and psychiatric or psychological care.
36. **In Personam Jurisdiction** means a court has power over a particular defendant.
37. **Independent Contractor** means a person working for an entity under contract and not an employee of the contracting entity. The contracting entity does not pay unemployment, disability, or workers' compensation insurance or withhold taxes from

payments to the person. An independent contractor normally follows the contracting entity's direction on the results of the work but not on the means of accomplishing the work.

38. **Inmate** means a CDCR incarcerated public offender.
39. **Institution** means a large facility or complex of sub facilities with a secure (fenced or walled) perimeter headed by a Warden.
40. **Institution/Facility Contract Liaison** means a CDCR employee responsible for pre-arranging medical contracting services and responsible for managing at the institution/facility the contractual scope of service/performance issues to assure continuity of care.
41. **Locum Tenens** means a free benefit to professional liability insurance policies which provides policyholders forty-five (45) free days, (more or less, depending on carrier) for substitute physicians to perform the duties of the policyholder while he/she is on vacation or temporarily away from the office. A locum tenens shares the limits of liability with the named insured and is identified on the evidence of valid coverage.
42. **Matrix** means a document which indicates the ranking of Contractors, which determines the order in which contracted services may be requested.
43. **May** means permitted.
44. **Medically Necessary** means health care services that are determined by the attending physician to be reasonable and necessary to protect life, prevent significant illness or disability, or alleviate severe pain, and are supported by health outcome *data* as being effective medical care (CCR, Title 15, Division 3, Chapter 1, Subchapter 4, Article 8, Section 3350(b), Provision of Medical Care and Definitions).
45. **Non-Essential Services** means a non-emergency/scheduled admission for medical services when the patient-inmate's/youth's condition permits adequate time to schedule the necessary diagnostic workup and/or initiation of treatment, in accordance with CCR, Title 15.
46. **Off-Site in the Community** means a general medical location, not at a CDCR institution, facility or CDCR satellite location, where contracted services are provided (e.g. Hospital, Telemedicine, Surgery Center, Office).
47. **On-Site at the Institution** means contracted services are performed at a CDCR institution, facility and/or a designated CDCR satellite location.
48. **Patient Day** means a day in which a CDCR patient-inmate/youth occupies an inpatient bed as of the midnight census. If both admission and discharge occur on the same day, the day is counted as one patient day.

49. **Patient-Inmate** means a CDCR incarcerated public offender receiving health care services.
50. **Patient-Inmate Data** means any piece of information, administrative or medical, specific to an incarcerated public offender receiving medical or surgical treatment in a hospital, office, clinic or hospital outpatient surgery center.
51. **Penal Code Section 5054** means the section of law which grants the Secretary of CDCR the authority and responsibility for the custody and care of California's institutionalized public offenders.
52. **Physician** means an authorized practitioner of medicine, as one graduated from a college of medicine or osteopathy and licensed by the appropriate board.
53. **Preferred Provider Network** means an organization responsible for maintaining and providing a network of medical providers to perform medical services for CDCR patient-inmates/youth.
54. **Prescription Drugs** means all drugs which, under State or federal law, require the written prescription of a doctor, dentist, podiatrist or osteopath, or any medicinal substance which is required to bear the legend, "Caution: Federal law prohibits dispensing without a prescription" under the federal Food, Drug and Cosmetic Act.
55. **Prescription Order** means the request by a physician for each separate drug or medication and each authorized refill of such request.
56. **Prior Authorization** means the required advance authorization granted by the CEO/CME/CMO/HCM or her/his designee.
57. **Provider** means a person with whom Contractor enters into an arrangement, whether expressed or implied, for the purpose of performing any service described in the Agreement between Contractor and CDCR. The term "Provider" may include, but is not limited to, a subcontractor, consultant, employee.
58. **Rank Order** means the ranking of Contractors on a Matrix based on rates offered by the Contractors; Rank 1 is the Contractor offering the lowest rates.
59. **Receiver** means person appointed by the United States District Court for the Northern District of California to assume the executive management of the California prison medical system with the authority to exercise all powers vested by law in the Secretary of the CDCR.
60. **Secretary** means the Secretary of CDCR.
61. **Shall** means mandatory.
62. **Should** means suggested or recommended.
63. **Skilled Nursing Care** means skilled supervision and management of a complicated or extensive plan of care for a CDCR patient-inmate/youth initiated and monitored by a

physician in which there is a significantly high probability that complications would arise without the skilled supervision or implementation of the treatment program by a licensed nurse or therapist.

64. **State** means the State of California.
65. **State Administrative Manual (SAM)** means the manual which provides the policies and procedures and the uniform guidance for governing the fiscal and business management affairs of the State of California.
66. **State Business Days** means Monday through Friday not counting State holidays.
67. **Subcontractor** means any person or entity that has entered into a contract, either expressed or implied, with a Contractor for the purpose of performing any service under the Contractor's Agreement with CDCR.
68. **Surgery Center** means an ambulatory out-patient medical treatment facility where medical surgery services are performed in the community.
69. **Telemedicine** means the use of medical information exchanged from one site to another via electronic communications for the health of the CDCR patient-inmate/youth and for the purpose of improving CDCR patient-inmate/youth care. Telemedicine includes consultative, diagnostic and treatment services.
70. **Total Patient Days** means the total inpatient days from the day of admission to, but not including, the day of discharge.
71. **Transfer Order** means the written document, issued and signed by the CDCR patient-inmate's/youth's attending physician, which notes the medications, treatment, and diet orders for the CDCR institution/facility and provides instructions to the CDCR patient-inmate/youth in order to maintain continuity of care. A transfer order is prepared when a CDCR patient-inmate/youth is discharged from the hospital and is returning to a CDCR institution/facility.
72. **Transfer Summary** means the written document which precedes or accompanies a CDCR patient-inmate/youth upon a CDCR patient-inmate's/youth's discharge from a hospital to a skilled nursing or intermediate care facility, Correctional Treatment Center, or to the distinct skilled nursing or intermediate care service unit of the hospital where continuing care will be provided. The transfer summary, signed by the attending physician, includes the following information relative to the patient-inmate's/youth's 1) diagnosis 2) hospital course 3) medications 4) treatments 5) dietary requirements 6) rehabilitation potential 7) known allergies and 8) treatment plan.
73. **Urgent Care** means a non-emergency admission or occurrence where timely evaluation and treatment is required for medical/psychiatric attention and/or hospitalization, but there is no immediate threat of loss of life or limb.
74. **Utilization Management (UM)** means a strategy designed to ensure that health care expenditures are restricted to those that are needed and appropriate by reviewing CDCR patient-inmate/youth medical records through the application of defined criteria and/or expert opinion. It assesses the efficiency of the health care process and the

appropriateness of decision making related to the site of care, its frequency and its duration, through prospective, concurrent, and retrospective utilization reviews.

75. **Vendor** Please see definition for Contractor.
76. **Warden** means a peace officer responsible for managing the overall operation of a State correctional institution for adult felons. The Warden is responsible for formulating and executing the inmate's program for the care, treatment, training, discipline, custody and employment of inmates.
77. **Youth** means youthful offenders detained in a DJJ facility.