

**CALIFORNIA PRISON HEALTH CARE SERVICES
OFFICE OF THE RECEIVER**

**REQUEST FOR PROPOSALS
FOR
LABORATORY SERVICES MANAGEMENT ASSISTANCE
FOR CALIFORNIA ADULT PRISON FACILITIES**

RFP ID: RFP-09-007-Non-ITS

March 19, 2009

I. REQUEST

California Prison Health Care Services (CPHCS)¹ is requesting proposals for professional laboratory services management assistance. This assistance supports CPHCS' need to stabilize and remediate its laboratory services across the CPHCS enterprise.

II. BACKGROUND

As a result of the State of California's failure to provide medical care to inmate-patients at constitutionally acceptable levels, the United States District Court for the Northern District of California has established a Receivership to assume the executive management of the California prison medical system and raise the level of care up to constitutional standards. On February 14, 2006, the Court appointed the Receiver and granted him, among other powers, the authority to exercise all powers vested by law in the Secretary of the CDCR as they relate to the administration, control, management, operation, and financing of the California prison medical health care system.

The Court's actions stem from the case of *Plata v. Schwarzenegger* -- a class action lawsuit brought on behalf of the CDCR's adult inmates. For further information regarding the conditions underlying the Receivership and the powers and responsibilities of the Receiver refer to the Court's October 3, 2005 "Findings of Fact and Conclusions of Law Re Appointment of Receiver" ("FFCL") and the Court's February 14, 2006 "Order Appointing Receiver". These and other relevant documents can be found on CPHCS' website at <http://www.cphcs.ca.gov/>.

The CDCR mental health and dental systems are also under court supervision as a result of two additional inmate class actions: *Coleman v. Schwarzenegger* and *Perez*

¹ CPHCS conducts this procurement under the Receiver's authority described in Section II below. Therefore, references to "Receiver," "Receivership," "CPR," "CPHCS," and other terms in this RFP that describe entities through which the Receiver exercises his authority, should be viewed as being synonymous, unless the context clearly suggests otherwise. The contract resulting from this procurement may be in the name of the California Department of Corrections and Rehabilitation (CDCR), or the contract rights and responsibilities may subsequently be assigned to CDCR.

v. Tilton, respectively. To avoid duplication of effort, certain health care initiatives that support the entire health care system are being coordinated by *the Plata*, *Coleman*, and *Perez* courts. To facilitate such coordination, the courts have agreed that the Receiver will be responsible, in addition to his management of the medical system, for the oversight and implementation of certain mental health and dental support functions, including laboratory services management.

CPHCS currently delivers health care services to over 175,000 inmate-patients in 33 adult institutions throughout the state (see the following link for a map http://www.cphcs.ca.gov/docs/resources/CPHCR_map.pdf). The scope of the health care mission includes dental care, primary care, acute and urgent care, chronic care management, long-term care, hemodialysis, physical therapy and rehabilitation, and infirmarium-level care. Cases requiring specialty consultation or complex management are seen remotely by telemedicine or are referred to community medical offices or hospitals. The insert below characterizes the resources involved in laboratory testing across the state's 33 institutions.

- ❖ Annual lab test volume for 33 institutions is over 2.2M/Yr individual tests (combined on-site and off-site testing).
- ❖ The labs operate with ~105.5 FTE's considered State employees; plus 63.6 phlebotomists.
- ❖ CPHCS spends an estimated \$31M/Yr in lab services, including in-house, send out, and other costs.
 - Laboratory services performed under the control of CDCR cost ~\$15.8M/Yr.
 - Reference laboratory services cost ~\$15.1M/Yr.

Until recently, health care operations in the 33 institutions were confined to silos with no central planning, management, or oversight of services. Consequently, each institution has been responsible for developing its own clinical laboratory program. As a result, there is no standardization in services. Neighboring institutions may have contracts with different reference laboratories at very different rates and different levels of service. Some facilities have outdated equipment dating from the 1980's while others have purchased new analytic equipment but they lack the expertise and equipment to install.

Because CPHCS' health care information technology infrastructure has suffered from decades of neglect, the network is insufficient to support an enterprise laboratory information system (LIS). In many cases, lab results are not being made available to providers who ordered them. Additionally, facilities in remote California locations have had difficulty recruiting and retaining qualified laboratory staff and identifying facility space for lab functions such as phlebotomy and pre-analytical processing.

To reduce inefficiency and improve timeliness of medical care for CDCR's inmate-patients, the Receiver is creating a statewide strategy for improving enterprise clinical laboratory services. This redesign of lab services will occur in concert with other major improvements to the health care delivery system, including overhauls of information technology, pharmacy, imaging/radiology, telemedicine, and various access to care initiatives. Consequently, we expect to have the infrastructure to support an enterprise LIS and a clinical data repository in the near future.

To further these efforts the Office of the Receiver recently engaged a contractor to provide a comprehensive assessment of existing laboratory services (Clinical Laboratory Assessment and Improvement Strategy – Final Report; hereafter referred to as “Assessment Report” – http://www.cphcs.ca.gov/docs/court/Q9_CLAIS_20080407.pdf). Assessment Report findings include the following statements:

“The existing clinical laboratory services fail to provide the necessary service requirements to guarantee safe and adequate quality healthcare to inmates at the CDCR facilities.”

“CDCR will be required to implement immediate improvements to minimize risk, and concurrently begin planning a long-term corrective action plan to overhaul existing laboratory systems and create a safe and sustainable future operational model.”

Extensive detail about the aforementioned deficiencies can be found in the Assessment Report, including identification of recommended short term actions and alternative long term operational models. It is important to note that although the Assessment Report has been accepted by the Receiver, the scope of work intended under this RFP represents a derivation of these recommendations based on current stabilization and remediation needs. To address these needs, the Office of the

Receiver seeks to contract for enterprise laboratory management services to stabilize and remediate laboratory services.

This effort will also include facilitating CPHCS' decisions regarding a long term operational model for CPHCS laboratory services once stabilization and remediation actions have been substantially accomplished. CPHCS will select a qualified firm to take over management of laboratory services and to put into practice the required improvements to laboratory services. The selected firm will also be responsible for transitioning all laboratory management and operational control back to the state.

The contractual agreement that results from this procurement is for a period of 36 months and will include an option for two additional one year extensions of services. These services do not include providing contracted lab testing services (e.g., Reference Lab services).

III. SCOPE OF SERVICES

General Scope of Services

CPHCS seeks to contract for professional management services to assist CPHCS in stabilizing and remediating its laboratory services across the CPHCS enterprise. CPHCS has identified targeted objectives for these professional management services from the Assessment Report and remediation experience in other CPHCS projects. These objectives have been organized under the following six work packages:

Work Package 1 - Project Management & Orchestration

Work Package 2 - Assessment Update

Work Package 3 - Stabilization & Remediation Planning

Work Package 4 - Stabilization & Remediation Implementation

Work Package 5 - Long Term Operational Model Selection

Work Package 6 - Operational Cutover

This scope of services is a significant undertaking that requires substantial experience and capability in project management and service orchestration as well as substantial experience and knowledge of laboratory services. These services will be provided across the CPHCS enterprise while several other remediation projects are underway. CPHCS seeks to emphasize the importance of project management and orchestration of these enterprise stabilization and remediation services. This emphasis is stated to assure effective performance in areas such as planning, progress reporting, change management, communication management, deliverable production, and overall success of the engagement.

Bidders are encouraged to partner with other firms to round out their depth of staff and experience to meet the scale and scope of this engagement. Bidders that have performed previous work for the Receiver, CPHCS, or CDCR are not excluded from bidding.

The work and work products from each of these work packages is intended to fulfill the clinical, operational, and administrative goals of CPHCS, CDCR facilities, and their stakeholders, including fulfilling the following expected results:

For CPHCS:

- 1) Constitutional level of healthcare delivery to CDCR inmate-patients.
- 2) Standardization of laboratory services throughout the system.
- 3) Electronic access to laboratory orders and results as well as integration with other clinical information systems.
- 4) Effective test utilization to positively impact clinical outcomes.
- 5) Experienced laboratory system leadership and management.
- 6) Proficient laboratory personnel.
- 7) Centralized Quality Management for Lab Services.
- 8) Well managed and measureable stabilization and remediation performance.

For Health Care Providers:

- 1) Accurate and timely laboratory test results to effectively monitor, diagnose, and treat.
- 2) Timely access to STAT laboratory services.
- 3) Timely test results available in the chart, electronically at the point of care, and with system-wide transparency.
- 4) Standardized test menu, test priorities, reference ranges.

For CPHCS Laboratory Personnel:

- 1) Medical Directorship to oversee the implementation of a Quality Management System and general operations of laboratories.
- 2) Education, training, coaching, and accountability.
- 3) Standardized and contemporary equipment.
- 4) Adequate and safe space.
- 5) Standardized enterprise Laboratory Information System.

Detailed Scope of Services

1. Work Package 1 - Project Management & Orchestration

1.1. Create a *Project Management Plan* in accordance with the methods and practices established by the Project Management Institute (as defined in the Project Management Body of Knowledge - PMBOK, version 4, 2008). This plan must include at least the following elements:

1.1.1. A process description for each of the PMBOK's nine knowledge areas that either describes how your organization will manage these processes or why the knowledge area processes are not required. The nine knowledge areas to be documented are:

- | | | |
|---|-----------------|----------------------|
| ✓ Scope Mgmt | ✓ Time Mgmt | ✓ Cost Mgmt |
| ✓ Quality Mgmt | ✓ Risk Mgmt | ✓ Communication Mgmt |
| ✓ Integration Mgmt
(including Change Mgmt) | ✓ Resource Mgmt | ✓ Procurement Mgmt |

1.1.2. A description of how project management will integrate with and support the professional services provided to stabilize and remediate the CPHCS laboratory services enterprise.

1.1.3. A work plan and schedule for project management support of the entire engagement. Please note that this workplan and schedule can be integrated later with the detailed workplan and schedule to be provided under Work Package #3.

1.2. Provide for continuous performance measurement and monitoring of stabilization and remediation services. Such information should be visible and available to key CPHCS stakeholders including institutional representatives, CPHCS leadership, and Project Management Office (PMO) staff.

1.3. Perform ongoing coordination with the CPHCS PMO through attendance of periodic PMO meetings and support of periodic report production.

1.4. Coordinate site visitation and site communication in conjunction with the CPHCS Project Manager to assure proper integration with other remediation projects as well as regional and institution leadership and staff.

- 1.5. Prepare deliverables in accordance with CPHCS requirements to assure high quality, timely, and useful deliverables.
- 1.6. Create *Monthly Project Performance Reports* that summarize at least the following:
 - 1.6.1. An executive view of performance progress for the CPHCS enterprise, regions, and individual institutions, as appropriate.
 - 1.6.2. Work accomplished, deliverables completed, and costs incurred in the last reporting period.
 - 1.6.3. Planned work and deliverables for the next reporting period.
 - 1.6.4. A summary of any approved or proposed changes to scope, schedule, or cost when compared to accepted baseline agreements.
 - 1.6.5. A summary of key project risks and action changes in the last reporting period.

2. Work Package 2 - Assessment Update

- 2.1. Using the Assessment Report as a baseline, create an *Assessment Report Update* with information that includes:
 - 2.1.1. A record of significant changes in lab service performance since the Assessment Report was completed based on interviews with project stakeholders and perspective gained from visiting three local correctional institutions (e.g., San Quentin, Folsom, California Medical Facility).
 - 2.1.2. Information that would further justify or support the work products in Work Package 3 – Stabilization & Remediation Planning or subsequent work packages.

3. Work Package 3 - Stabilization & Remediation Planning

3.1. Create a *Stabilization & Remediation Roadmap* to illustrate the following:

- 3.1.1. A clear stabilization and remediation work strategy to achieve enterprise stabilization and remediation in accordance with organizational goals and expected results.
- 3.1.2. Clear work packages that define a logical series of activities, work products, and resources linked to expected results that serve to stabilize and remediate lab services across the CPHCS enterprise.
- 3.1.3. Resources available to meet unexpected demands to lead, manage, and support lab service needs across the CPHCS enterprise.
- 3.1.4. Financial estimates supporting each work package including all activities, work products, and resources required to stabilize and remediate lab services across the CPHCS enterprise.

3.2. Create a *Stabilization & Remediation Action Plan* that includes the following elements:

- 3.2.1. Clear, incremental, and measureable performance milestones and deliverables for all stabilization and remediation activities separated by no more than 90 days of performance.
- 3.2.2. Clear workplan and schedule that illustrates the sequence and timing of activities, work products, resources, and resource costs for each work package identified in the Roadmap deliverable.
- 3.2.3. Clearly defined resources and processes to manage unforeseen lab services needs across the CPHCS enterprise.

Note: Completion of this Action Plan must follow review and acceptance of the *Stabilization & Remediation Roadmap* deliverable by CPHCS.

3.3. Create an *Updated Project Management Plan* to include the following:

- 3.3.1. Project management process changes that are required to support the scope and scale of stabilization and remediation efforts addressed by the Roadmap and Action Plan efforts.

4. Work Package 4 - Stabilization & Remediation Implementation

4.1. Manage stabilization and remediation work to achieve each of the expected results in accordance with the Stabilization & Remediation Action Plan.

These efforts include but are not limited to the following:

- 4.1.1. Providing leadership, governance, and quality management for lab services across the CPHCS enterprise until these responsibilities are assumed by state staff.
- 4.1.2. Providing laboratory services subject matter expertise in support of laboratory services stabilization, remediation, and operations needs.
- 4.1.3. Preparing all deliverables and other work products articulated in the Stabilization and Remediation Action Plan.

5. Work Package 5 - Long Term Operational Model Selection

5.1. Prepare a *Long Term Operational Model Selection Report* that summarizes at least three alternative models for long term operations. Use this report to guide CPHCS leadership through its selection of a Long Term Operational Model for laboratory services. This report will record that selection decision. These alternative models must at least include all of the following:

- 5.1.1. A clear alternative description;
- 5.1.2. A detailed estimate of resources and costs projected over a 5 year future;
- 5.1.3. A summary of alternative pros and cons; and
- 5.1.4. Other key decision elements to support model selection by CPHCS leadership.

6. Work Package 6 - Operational Cutover

- 6.1. Create an *Operational Cutover Plan* that describes the plan for cutover following stabilization and remediation activities. This plan should address at least the following elements:
 - 6.1.1. Cutover strategy, timing, resources, and risks for each institution or organization as well as any central laboratory management functions or organizations.
 - 6.1.2. Performance measurement and monitoring requirements to measure cutover and operational performance.
- 6.2. Create an *Operational Cutover Performance Summary* to serve as a dashboard view to provide visibility on progress towards key cutover steps and cutover completion for each institution or organization.

Deliverables

Each Work Package requires the creation of deliverables or other work products. These deliverables or work products serve as a mechanism for measuring performance to defined plans and expected goals. Although CPHCS is encouraging innovative approaches to services and service strategies to meet CPHCS objectives, CPHCS requires some generally accepted practices for the creation of deliverables.

To that end, CPHCS requires the creation, review, and agreement on Deliverable Expectation Documents (DED's) for every deliverable or deliverable type. DED's establish administrative agreement (e.g., timing, and responsibilities) as well as a model or example of each deliverable in advance of completing the deliverable for CPHCS review. Use of DED's is mutually beneficial to both performing vendors and CPHCS by providing early alignment and agreement of expectations as well as an expedited review of deliverable content.

Deliverables must have a DED developed for review after no more than 50% of the elapsed duration of the deliverable preparation period. For example, a deliverable that takes 6 months to prepare must have a DED prepared no later than 3 months into the deliverable preparation. A deliverable that takes 3 months to prepare must

have a DED prepared for CPHCS review no later than 1.5 months into deliverable preparation.

Each deliverable will have an established review and revision period to allow for appropriate resource planning and effective deliverable review. The selected vendor should assume that CPHCS will require 5 business days to review “small” deliverables and 10 business days to review “large” deliverables. The selected vendor is expected to provide a deliverable walkthrough or summary presentation to appropriate CPHCS stakeholders immediately prior to their review. The selected vendor is required to catalog CPHCS review feedback and responses during the deliverable revision process to assure that CPHCS needs are met.

The following table describes the deliverables required for this engagement, their associated work packages, expected review types, and due dates.

ID	Deliverable Name	Work Pkg #	Rvw Type	Due Date**
1-1	Project Management Plan	#1	Small	Start plus 30 days
1-n	Monthly Project Performance Reports	#1	Small	Start plus 60 days
2-1	Assessment Report Update	#2	Small	Start plus 60 days
3-1	Stabilization & Remediation Roadmap	#3	Large	Start plus 90 days
3-2	Stabilization & Remediation Action Plan	#3	Large	30 days after CPHCS approval of Deliverable 3-1
3-3	Updated Project Management Plan	#3	Small	30 days after CPHCS approval of Deliverable 3-1
4-n	<Stabilization & Remediation Action Plan Deliverables> To be determined by selected vendor.	#4	Variable	As Planned, separated by no more than 90 days

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ID	Deliverable Name	Work Pkg #	Rvw Type	Due Date**
5-1	Long Term Operational Model Selection Report	#5	Large	End minus 90 days
6-1	Operational Cutover Plan	#6	Large	As Planned
6-2	Operational Cutover Performance Summary	#6	Small	Monthly, following cutover start

** Days refers to elapsed calendar days

IV. Qualifications

CPHCS is seeking qualified firms who can demonstrate substantial knowledge and experience in domains that support accomplishment of the scope of work, deliverables, expected results, and overall success of this endeavor. We are seeking firms with knowledge and experience in the following qualification domains:

- (1) Laboratory services management and operations
- (2) Laboratory services governance and quality management
- (3) Multi-site laboratory services including reference lab services
- (4) Laboratory Information Systems and related information technology
- (5) Regulatory compliance, accreditation, and standards for lab services
- (6) Project and program management
- (7) Large scale remediation or improvement initiatives
- (8) State and/or Federal government services
- (9) California state government
- (10) Correctional health care

CPHCS realizes that bidders may not be able to meet all knowledge and experience needs. However, CPHCS encourages responding firms to combine qualifications in a single offer to strengthen their ability to meet all of our qualification and performance needs.

CPHCS encourages the presence of local resources from responding firms to assure adequate attention to daily, weekly, and monthly stabilization and remediation demands in Sacramento, California. CPHCS expects responding firms to at least assure the local presence of a leadership resource that has executive decision authority and subject matter expertise in laboratory services as well as the local presence of an experienced project management leader resource. These resources must be clearly identified in the vendor's proposal.

V. SELECTION PROCESS

An Evaluation Committee (the “Committee”) will review the submitted proposals in accordance with submittal requirements and evaluation criteria set forth below and will recommend to the Receiver a short list of firms for further consideration. Upon acceptance of the short list, the Receiver may invite short-listed firms to make oral presentations to the Committee in an “interview” session.

If the Receiver elects to conduct oral interviews, the entire proposed Key Staff of any short-listed teams must be available to participate in these interviews. The Committee will then make a final evaluation and submit its recommendation to the Receiver. The Receiver will make a final determination and authorize negotiations with one or more of the firms that have submitted their qualifications and whose responses are most advantageous to the Receiver.

The Receiver reserves the right to seek clarification of information submitted in response to this RFP and/or request additional information during the evaluation process. The Receiver reserves the right to accept or reject any or all qualifications and selections when it is determined, in the sole discretion of the Receiver, to be in the best interest of the Receiver.

The Receiver intends to negotiate and enter into a services agreement (“the Agreement”) with the selected Respondent promptly upon selection. Prior to commencing the Services, the selected contractor must sign the Agreement and provide proof of insurance. The Agreement will include the General Terms and Conditions and Contractor Certification Clauses set forth in Appendix C of this RFP. The Agreement is anticipated to be for a period of not more than thirty-six months. At the Receiver’s discretion, this contract may be extended as required.

VI. EVALUATION CRITERIA

The Committee will review Proposals in accordance with the following criteria:

- 1)** Completeness and comprehensiveness of response to this RFP and compliance with the submittal requirements.
- 2)** Respondent understands the context of CPHCS' medical service delivery issues by reviewing the website and being familiar with the Turnaround Plan of Action, court reports/documents, and the Assessment Report for laboratory services.
- 3)** Respondent demonstrates clear understanding of laboratory services that are required to achieve CPHCS expected results across the CPHCS enterprise.
- 4)** Respondent's organizational qualifications demonstrate proven knowledge, experience, capabilities and resources, in providing laboratory consulting services to programs comparable in size, scope of work, and urgency to meet CPHCS needs.
- 5)** Respondent's proposed Key Personnel must present a diverse, experienced, and qualified team that demonstrate:
 - a) Alignment with CPHCS qualifications requirements.
 - b) Proven knowledge, experience, capabilities and resources, in providing laboratory consulting services to programs comparable in size, scope of work, and urgency to meet CPHCS needs.
 - c) The availability and commitment of key staff.
- 6)** Respondent demonstrates a clear understanding and knowledge of:
 - a) Federal and California laws, rules, and regulations regarding laboratory services.
 - b) Federal and California laws, rules, and regulations regarding the privacy and security of health information and other personal, confidential, or sensitive information.

- c) Specific rules and regulations regarding correctional facilities.
 - d) Relevant and helpful accreditation agency standards.
- 7)** The proposal that clearly addresses the Work Strategy and Plan requirements under the Submittal Requirements section of this RFP. This includes identifying the key staff that will perform the work and why their expertise is required.
 - 8)** Presents a reasonable budget and reasonable service rates.
 - 9)** References that confirm a level of performance to be expected by CPHCS leadership for this engagement.
 - 10)** Quality of oral interviews including analysis and presentation (if requested by the Receiver).
 - 11)** Legal actions that might affect Respondent's ability to perform as contracted.
 - 12)** Absence of any relationship that could constitute an actual or perceived conflict of interest or otherwise impede the ability of the Respondent to protect the interests of CPHCS, CDCR, or the State.

VII. SUBMITTAL REQUIREMENTS

Key Action Dates

Key Actions	Dates
RFP issued	March 19, 2009
Bidder's conference (estimated)	April 3, 2009
Deadline for questions regarding RFP	May 1, 2009
Final responses to questions	May 8, 2009
Proposals due	May 15, 2009
Notification for interviews (estimated)	May 22, 2009
Interviews - week of (estimated)	June 3, 2009
Selection announced (estimated)	June 12, 2009
Project start date (estimated)	July 15, 2009
End of initial contract term	June 30, 2012
End of initial contract term plus possible one year extension	June 30, 2013
End of initial contract term plus possible second one year extension	June 30, 2014

Addenda

Any questions regarding the RFP should be submitted to CPHCS in writing via email to the inquiries contact listed at the end of this section. CPHCS will, at its discretion, respond to questions in an addendum. Any necessary information not included in this RFP that CPHCS deems necessary and relevant to responding to the RFP will also be issued in an addendum. CPHCS makes no guarantee that all questions submitted will be answered.

Addenda will be sent to all known applicants. If the Respondent did not receive this RFP directly from CPHCS, notify CPHCS in writing of a request to receive any addenda by the due date for "final responses to questions".

Bidder's Conference

An Addendum will be posted providing the place, time, and other details for attending the Bidder's Conference. For those who cannot attend in person, a method for remote attendance will be provided via teleconference and/or a web service.

Attendance is not mandatory. However, given the complexity of the laboratory environments and services required to achieve the aims of the Receivership, attendance is very much recommended. Issues that involve complexity of need, organizational culture, and technical constraints will be addressed to assist all vendors in better understanding the need.

Additionally, some firms have found in the past that it is essential to partner with other firms to put together a team with sufficient depth and breadth to meet the challenges posed by turnaround for an organization servicing in excess of 175,000 people in exceptionally challenging settings at 33 locations across the state.

Format

Proposals should be clear, concise, complete, well organized and demonstrate both Respondent's qualifications and the ability to follow instructions. Respondents must provide:

- i. Nine (9) bound copies of the Proposal.
- ii. All materials spiral bound into books of approximately 8-1/2" x 11" format.
- iii. At least one (1) copy must contain original signatures and be marked ORIGINAL.
- iv. No more than sixty (60) single-sided pages total length.
- v. Font must be not less than 10 point, single line space, except in figures or graphics.
- vi. Margins must be not less than 1 inch.
- vii. Pages must be numbered. We will not count in the total the following:
 - ✓ Graphic cover sheet
 - ✓ Cover letter

- ✓ Table of contents
 - ✓ Blank section dividers (tabs)
 - ✓ Explanations about legal actions, default termination, or conflict of interest.
 - ✓ Resumes or Curricula Vitae, which may be included in an appendix or attachment.
- viii. The entire Proposal in electronic format as a singular pdf file on CD or electronically by e-mail, organized in the same manner as the printed submissions. To the maximum extent possible, text should be in text format and not graphical format.
- ix. The Proposals placed in a sealed container with the submitting firm's name on the outside of the container.

Respondents are advised to adhere to submittal requirements. Failure to comply with the instructions of this RFP may be cause for rejection of submittals.

The Receiver reserves the right to waive any informality in any submittal and/or to reject any or all submittals. The Receiver reserves the right to seek clarification of information submitted in response to this RFP during the evaluation and selection process. The Committee may solicit relevant information concerning the firm's record of past performance from previous clients or consultants who have worked with the Respondent or their proposed staff.

All respondents are requested to follow the order and format specified below. Please tab each section of the submittal to correspond to the numbers/headers shown below.

Contents

The Proposal must include the following items:

- a. **Cover Letter** - This letter must be signed by an officer of the firm submitting the Proposal, or signed by another person with authority to act on behalf of and bind the firm. The cover letter must contain a commitment to provide the required services described with the personnel specified in the submission.

The letter should certify that the information contained in the Proposal is true and correct. Please also indicate the contact person(s) for the selection process along with contact information.

b. **Executive Summary** - This section must include at least the following:

- (1) A clear description of the primary advantages of contracting with your organization.
- (2) A brief statement that demonstrates Respondent's understanding of the desired services.
- (3) A brief explanation of how the Respondent will satisfy the scope of services and qualification requirements in this RFP.

c. **Work Strategy and Plan** - This section must at least include information on the following:

- (1) Your firm's strategy and plan for achieving the scope of work, deliverables, and their related expected results for Work Packages #2 and #3 in the Scope of Services section of this RFP.
- (2) Your firm's strategy and plan for achieving the scope of work, deliverables, and their related expected results for Work Package #1 in the Scope of Services section of this RFP, for work during the period of performance required of Work Packages #2 and #3.

d. **Demonstration of the Respondent's Qualifications** - Please provide the following information:

- (1) Your firm's name, business address and telephone numbers, including headquarters and local offices.
- (2) A brief description of your organization, including names of principals, number of employees, longevity, client base, and areas of specialization and expertise.
- (3) A brief summary of subcontracted organizations. Clearly identify subcontracted personnel that are included in your firms' proposal.

- (4) A description of your company's experience, and that of your subcontractors, related to the ten qualification domains listed in the Qualifications section of this RFP.
 - (5) A description of how your proposed Key Personnel meet the ten qualification domains listed in the Qualifications section of this RFP. Also include at least the following:
 - A statement regarding their local availability.
 - Specific description of previous related experience and its pertinence to this program.
 - References including the name address and telephone number of a contact person who can verify the information provided.
 - Any professional certifications, accreditation, special licensing or other qualifications which qualifies the professional to perform in their designated area of responsibility
 - (6) A current resume or Curriculum Vitae for Key Personnel. This information may be provided as an appendix or attachment.
- e. **Firm References** - Describe previous work for the qualifying firm and its subcontractors on no more than three projects of comparable scope and magnitude for which you provided similar types of services. Provide complete reference information including:
- (1) project name
 - (2) location
 - (3) client
 - (4) total contract amount (and firm's amount if different)
 - (5) principal-in-charge
 - (6) day-to-day technical project director/manager
 - (7) key staff
 - (8) date completed
 - (9) client reference (name, current position and phone number)

- (10) A brief narrative of project description for each project identified and described above. **Experience may not be considered if complete reference data is not provided or if named client contact is unavailable or unwilling to share required information.**
- f. **Cost Proposal** - The respondent must provide a cost proposal using the cost proposal template referred to in the Cost Proposal Appendix of this RFP.
- (1) The proposal for Part A costs will not separately itemize capital costs, office, travel expenses, or other expenses. Such expenses will be included in rates for personnel.
- (2) For Part B, travel within the state to visit facilities will be at state rates (see additional rules below) and should not be included in the resource rate. Capital costs, office expenses, out of state travel, and other burdens must be included in the rates provided.

The work location will be near at 501 J Street in Sacramento, CA, the CDCR Aerojet facility (1900-1940 Alabama Street) in Rancho Cordova, CA, or another designated location in the greater Sacramento region. Travel outside the greater Sacramento metropolitan area will be necessary as CPHCS has institutions located throughout the State

Any reimbursable travel and/or other expenses must be approved in advance by the Director of Clinical Operations or designee and itemized in the Contractor's proposal. 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.

No travel or parking within the Sacramento metropolitan area will be paid. Parking fees are typically required at the 501 J Street location in downtown Sacramento. Only approved business travel originating at the

CPHCS site may be reimbursed. Travel from a consultant's home or business to the primary CPHCS project site is not reimbursable, unless otherwise expressly authorized by CPHCS

- g. **Legal action** - Respondent must provide a listing and a brief description of all material legal actions, together with any fines and penalties, for the past five (5) years in which (i) Respondent or any division, subsidiary or parent company of Respondent, or (ii) any member, partner, etc., of Respondent if Respondent is a business entity other than a corporation, has been:
- (1) A debtor in bankruptcy;
 - (2) A party in a legal action alleging deficient performance under a services contract or in violation of any statute related to professional standards or performance;
 - (3) A party in an administrative action for deficient performance on a project or in violation of a statute related to professional standards or performance;
 - (4) A defendant in any criminal action;
 - (5) A principal of a performance or payment bond for which the surety has provided performance or compensation to an obligee of the bond;
 - (6) A defendant or respondent in a governmental inquiry or action regarding accuracy of preparation of financial statements or disclosure documents or;
 - (7) A party in any legal action, whether currently pending or closed, in which CPHCS, CDCR, the Receiver, or the Receivership is a party.
- h. **Default Termination** - A disclosure of whether your company has defaulted in its performance on a contract in the last five years, which has led to the termination of a contract
- i. **Conflict of Interest** - Identify any existing financial relationships with other vendors that may be a part of your proposal, and explain why those relationships will not constitute a real or perceived conflict of interest. CPHCS will request additional information at or prior to time of award from the

Contractor that will prove the absence of any relationship, with vendors or other persons or entities that could constitute a conflict of interest or otherwise impede the ability of the Contractor to protect the interest of CPHCS, including but not limited to the completion of a Form 700 or its equivalent. You can view Form 700 at <http://www.fppc.ca.gov/forms/700-08-09/Form700-08-09.pdf>.

- j. **Darfur Contracting Act Certification Forms** - Offerors are required to submit the Darfur Contracting Act Certification forms as an Attachment of their RFP response. See requirements set forth in Provision 19, Darfur Contracting Act, of the Agreement form described in Appendix C of this RFP.

Modification or Withdrawal of Proposal

Prior to the Proposal due date, Respondents may modify or withdraw a submitted Proposal. Such modifications or withdrawals must be submitted to CPHCS in writing. Any modification must be clearly identified as such and must be submitted in the same manner as the original (e.g., appropriate copies, paper size, etc.). No modifications or withdrawals will be allowed after the Proposal due date.

Public Opening

There will be no public opening of responses to this RFP. However, after a contract is awarded all Proposals may be available for public review. CPHCS makes no guarantee that any or all parts of a Proposal will be kept confidential, even if the Proposal is marked "confidential," "proprietary," etc.

General Rules

- a. Only one Proposal will be accepted from any one person, partnership, corporation or other entity.
- b. Proposals received after the deadline will not be considered.
- c. This is an RFP, not a work order. All costs associated with a response to this RFP, or negotiating a contract, shall be borne by the Respondent.
- d. CPHCS's failure to address errors or omissions in the Proposals shall not constitute a waiver of any requirement of this RFP.

Reservation of Rights

The Receiver reserves the right to do the following at any time, at the Receiver's discretion:

- a. Reject any and all Proposals, or cancel this RFP.
- b. Waive or correct any minor or inadvertent defect, irregularity, or technical error in any Proposal.
- c. Request that certain or all candidates supplement or modify all or certain aspects of their respective Proposals or other materials submitted.
- d. Procure any services specified in this RFP by other means.
- e. Modify the specifications or requirements for services in this RFP, or the required contents or format of the Proposals prior to the due date.
- f. Extend the deadlines specified in this RFP, including the deadline for accepting Proposals.
- g. Negotiate with any or none of the Respondents.
- h. Terminate negotiations with a Respondent without liability, and negotiate with other Respondents.
- i. Award a contract to any Respondent.

Inquiries in regard to this RFP and proposals should be addressed to:

**Steve Ruhnau
Project Management Office
510 I Street, Ste. 660-295
Sacramento, CA 95814**

laboratory.services.rfp@cdcr.ca.gov

916.956.7514

Appendix A – Lab Services Assessment Report

Please use the following link to access the Assessment Report from April 2008.

http://www.cphcs.ca.gov/docs/court/Q9_CLAIS_20080407.pdf

Appendix B – Cost Proposal

Please see the Excel file supplied separately as part of the bid package.

Appendix C – Scope of Work

Please see Exhibits A through D, which will form the body of the contracted services.

Please note, the format, language, and terms and conditions cannot be replaced or supplanted by vendor contract terms and conditions.

Should there be a specific concern with a term or condition provided in the standard State Scope of Work, please red-line the items in question and indicate the nature of the concern and specify a reasonable alternative.

The Receiver reserves the right to reject any response that:

1) Declines the State Terms and Conditions in whole or in part;

OR

2) Replaces the State Terms and Conditions in whole or in part with vendor language;

OR

3) Proposes changes in the State Terms and Conditions that materially affect the services described in the Scope of Work. Changes materially affecting the Scope of Work may include items that, in the judgment of the Receiver:

- Place undo limits on the extent, nature, or delivery of the services being bid
- Provide an advantage to the bidder over other bidders that have accepted the State's contract Terms and Conditions.

Offerors are required to submit the Darfur Contracting Act Certification forms as an Attachment of their RFP response. See requirements set forth in Provision 19, Darfur Contracting Act, of the Agreement form provided in the bidder's library.

PROFESSIONAL LABORATORY SERVICES MANAGEMENT ASSISTANCE AGREEMENT

This Professional Laboratory Services Management Assistance Agreement (“**Agreement**”) is made by and between _____ (“**Manager**”), with a principal place of business at _____, and the California Prison Healthcare Receivership Corporation (“**CPR**”), with a principal place of business at 501 J Street, Suite 100, Sacramento, CA 95814, effective _____, 2009 (“**Effective Date**”).

RECITALS

A. Manager is engaged in the business of providing professional laboratory services management assistance to health care organizations.

B. The United States District Court for the Northern District of California has established a receiver to assume the executive management of the California prison medical system and raise the level of care up to constitutional standards. On January 23, 2008, the Court appointed J. Clark Kelso to serve as the receiver and granted him, among other powers, the authority to exercise all powers vested by law in the Secretary of the California Department of Corrections and Rehabilitation (“**CDCR**”) as they relate to the administration, control, management, operation, and financing of the State of California (“**State**”) prison health care system. The receivership caused the formation of CPR, which provides staff and infrastructure to assist the receiver in discharging his court - appointed function.

C. CPR and Manager desire to enter into a business relationship under which CPR will acquire a variety of Laboratory Services Management Assistance (as defined below) from Manager.

NOW THEREFORE, in consideration of the promises and covenants set forth below, CPR and Manager agree as follows:

AGREEMENT

1. Scope and Personnel.

1.1 General. Manager shall provide to CDCR on behalf of CPR, in accordance with the terms and conditions of this Agreement, the professional laboratory services management assistance, including support medical, dental and mental health, for CDCR's prison facilities and parole offices that are described in the Statement of Work (“**SOW**”) set forth in Exhibit A to this Agreement (“**Laboratory Services Management Assistance**”). Manager shall submit quarterly progress reports to CPR, specifying its activities and milestones in the prior quarter, regarding the provision of Laboratory Services Management Assistance.

1.2 Use of Subcontractors. Manager shall not contract with a subcontractor (other than individuals working as independent contractors with Manager or its approved subcontractors) for the provision of Laboratory Services Management Assistance to CPR without the prior written approval of CPR. A proposal to use a subcontractor shall identify the subcontractor and include a description of tasks to be performed by the subcontractor. Manager shall bind subcontractor to all applicable terms and conditions set forth in this Agreement. CPR shall have the right to revoke its prior approval of a subcontractor and direct Manager to replace such subcontractor as soon as possible if the subcontractor's performance is materially deficient, good faith doubts exist concerning the subcontractor's ability to render future performance, or there have been material misrepresentations by or concerning the subcontractor. Manager shall remain responsible for obligations performed by subcontractors to the same extent as if such obligations were performed by Manager's employees. Manager shall not disclose Confidential Information (as defined below) of CPR to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information as required of Manager under this Agreement.

1.3 Personnel Staffing. CPR may disapprove the continuing assignment of Manager employees, agents and subcontractors ("**Manager Personnel**") provided to CPR or CDCR under this Agreement. If CPR exercises this right, and Manager cannot immediately replace the disapproved Manager Personnel, CPR and Manager shall proceed with any equitable adjustment in schedule or other terms that may be affected thereby. Manager shall make every effort consistent with sound business practices to honor the specific requests of CPR with regard to assignment of its Manager Personnel; however, Manager reserves the sole right to determine the assignment of its Manager Personnel. If a Manager Personnel is unable to perform due to illness, resignation, or other factors beyond Manager's control, Manager will make every reasonable effort to provide suitable substitute personnel.

1.4 Non-Exclusivity. Manager may perform services similar to Laboratory Services Management Assistance for other clients and shall not be restricted from using Manager Personnel provided under this Agreement for other clients, provided that such use does not conflict with or materially impair the performance of Laboratory Services Management Assistance.

1.5 Notice of Likely Delay. Time is of the essence in this Agreement. Manager shall bring to the attention of CPR reasonably promptly after learning any fact or event that would reasonably be likely to materially adversely affect the timely completion of Laboratory Services Management Assistance.

1.6 Independent Contractor. Manager and Manager Personnel, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of CPR or the State.

1.7 Safety and Accident Prevention. In performing work under this Agreement, Manager shall conform to any specific safety requirements contained in the Agreement

or required by law or regulation. Manager shall take any additional precautions as CPR 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 Agreement in accordance with the default provisions hereof.

1.8 Services Within Prison Facilities. If the provisions of this Agreement require Manager Personnel to enter a prison facility, Manager shall, and shall cause any Manager Personnel to, abide by applicable laws, rules and regulations governing conduct at prison facilities and in associating with prison inmates, as communicated to Manager by CPR or CDCR from time to time. CPR, the State, or their employees shall not be liable to Manager or its staff for injuries inflicted by inmates of the State. CPR shall disclose to Manager any statement(s) known to CPR staff made by any inmate which indicates violence may result in any specific situation. If services will be performed within a prison facility, prior to the performance of contracted duties, Manager Personnel may 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 CPR or CDCR. Manager Personnel may be required to furnish to CPR or CDCR, at no cost to CPR or CDCR, a Tuberculin Skin Test (TST) and evaluation, prior to assuming their contracted duties and annually thereafter, showing that Manager Personnel have been examined and found free of TB in an infectious stage.

While on institution grounds, Manager 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 manager should contact the institution regarding clothing restrictions prior to requiring access to the institution to assure the Manager and their employees are in compliance.

Manager and Manager's employee(s) and/or subcontractor(s) must be cleared prior to providing services. The Manager 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 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.

1.9 Priority Hiring Considerations. If compensation for Laboratory Services Management Assistance exceeds \$200,000, Manager shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Cal. Welf. and Inst. Code § 11200, in accordance with Cal. Public Contracts Code ("**PCC**") § 10353, if applicable.

1.10 Stop Work. CPR may, at any time, by written notice to Manager, require Manager to stop all, or any part, of the work called for by this Agreement for a period up to ninety (90) days after the notice is delivered to Manager, and for any further period to which CPR and Manager may agree. The notice shall be specifically identified as a "Stop Work Order" and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, Manager 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 ninety (90) days after a Stop Work Order is delivered to Manager, or within any extension of that period to which CPR and Manager shall have agreed, CPR 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 convenience provision of this Agreement.

If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, Manager shall resume work. CPR shall make an equitable adjustment in the delivery schedule, the Agreement price, or both, and the Agreement shall be modified, in writing, accordingly, if:

- (i) the Stop Work Order results in an increase in the time required for, or in Manager's cost properly allocable to, the performance of any part of this Agreement; and
- (ii) Manager asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided, that if CPR decides the facts justify the action, CPR may receive and act upon a proposal submitted at any time before final payment under this Agreement.

If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated, CPR shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. CPR shall not be liable to Manager for loss of profits because of a Stop Work Order issued under this clause.

2. Payment.

2.1 Compensation. CPR shall pay Manager for the furnishing of Laboratory Services Management Assistance in the amounts and on the terms set forth in the SOW; provided, that, the consideration to be paid Manager, as provided in the SOW, shall be in compensation for all of Manager's expenses incurred in the performance of Laboratory Services Management Assistance, including travel, per diem, and taxes, unless otherwise expressly so provided.

2.2 Required Payment Date. Notwithstanding any emergency fiscal provisions imposed by the State, CPR shall pay properly submitted invoices from Manager not more than 45 days after (i) the date of performance of Laboratory Services Management Assistance; or (ii) receipt of an invoice, whichever is later; provided, however, CPR shall be entitled to withhold payment of any charges that are subject to a good faith dispute between the parties until the resolution of such dispute.

3. Warranties. Manager represents and warrants that:

3.1 Personnel. Laboratory Services Management Assistance will be performed in a professional manner consistent with generally accepted industry standards. Manager Personnel assigned to provide Laboratory Services Management Assistance will have the proper expertise, skills, training and professional education to perform the services required under this Agreement in a professional manner and consistent with generally accepted industry standards.

3.2 Permits. Manager will obtain and keep current, at Manager's expense, all governmental permits, certificates and licenses (including professional licenses, if applicable) necessary for Manager to perform its obligations under this Agreement. Manager shall make applicable Laboratory Services Management Assistance delivered under this Agreement compliant with the applicable federal and state regulatory requirements.

3.3 Conformance with Agreement. Manager will substantially conform to the statements of fact, representations of available resources, representations of service levels and other representations made in this Agreement, including the SOW and any other exhibits or attachments to this Agreement.

3.4 Covenant Against Gratuities. No gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Manager, or any agent or representative of Manager, to any officer or employee of CPR or the State with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement. For breach or violation of this warranty, CPR shall have the right to terminate the Agreement, either in whole or in part, and any loss or damage sustained by CPR or the State in procuring on the open market any items which Manager agreed to supply shall be borne and paid for by Manager. The

rights and remedies of CPR provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

3.5 Americans with Disabilities Act. Manager complies and shall continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq).

3.6 Corporate Qualifications to do Business in California. Manager is currently qualified to do business in California.

3.7 Expatriate Corporations. Manager is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC §§ 10286 and 10286.1 and is eligible to contract with CPR.

4. Term and Termination.

4.1 Term. This Agreement shall continue in effect for an initial term of thirty-six (36) months, commencing upon the Effective Date. After the initial term, CPR may renew this Agreement for up to two additional one-year terms by providing Manager with written notice at least sixty (60) days prior to the expiration of the initial or first additional term.

4.2 Termination for Convenience. Either party shall have the right to terminate this Agreement with or without cause upon thirty (30) days prior written notice.

4.3 Termination for Breach. CPR or Manager may terminate this Agreement if CPR or Manager, as applicable, notifies the other party to this Agreement in writing of the other party's material breach of the Agreement and such breach is not cured within thirty (30) days of such notice. In the event of such termination, CPR may proceed with the work in any manner it deems proper. All costs to CPR shall be deducted from any sum due Contractor and the balance, if any, shall be paid to Contractor upon demand. In addition to the remedies noted in this paragraph, CPR, in its sole discretion, may terminate this Agreement immediately, without providing an opportunity to cure the breach, on notice to Manager, if CPR determines that Manager or Manager's agent, officer, employee or subcontractor, or Manager's subcontractor's agent, officer or employee, has engaged in illegal conduct in the performance of this Agreement. Termination shall not limit either party from pursuing other available remedies.

5. Obligations Upon Termination; Termination Assistance. Notice of termination shall not relieve Manager from performing outstanding duties under this Agreement and shall not relieve CPR from its obligation to pay fees outstanding. Upon any termination or expiration of this Agreement other than termination without cause by CPR, Manager shall provide reasonable termination assistance and shall comply with the reasonable directions of CPR to facilitate the orderly transition and migration from Manager to CPR or a third-party. Manager shall commence providing termination assistance services upon the delivery of the notice of termination. Manager shall continue providing termination assistance services for a period of not more than one -hundred eighty (180)

days after termination. CPR shall pay Manager for termination assistance services in the amounts and on the terms set forth in the SOW.

6. Intellectual Property Rights. All Deliverables, as defined in the SOW, originated or prepared by Manager pursuant to this Agreement, including but not limited to papers, reports, charts and other documentation, shall be delivered to and shall become the exclusive property of CPR. The ideas, concepts, know-how, or techniques relating to the subject matter of each Deliverable can be used by either party in any way it may deem appropriate. All inventions, discoveries or improvements of the Deliverables shall be the property of the State and/or CPR. This Agreement shall not preclude Manager from developing materials outside this Agreement, which are competitive to the Deliverables, irrespective of their similarity to Deliverables which might be delivered to the State and/or CPR. All preexisting intellectual property, copyrights, trademarks and products of Manager shall be the sole property of Manager ("**Manager IP**"). Except as otherwise specifically stated in this Section 6, Manager shall retain all right, title and interest in and to all Manager IP. However, to the extent Manager IP is incorporated into a Deliverable or required to fully exploit such Deliverable for the purposes intended by Manager and CPR under the SOW, Manager hereby grants to the State and/or CPR a perpetual, irrevocable, fully paid up, royalty free, transferable, sublicensable, worldwide, non-exclusive right and license to use the Manager IP, as incorporated into the Deliverable, for such purpose.

7. Audit. CPR or its designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of the Laboratory Services Management Assistance under this Agreement. Manager shall: (i) 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; (ii) upon reasonable prior written notice, allow the auditor(s) access to such records during normal business hours; (iii) allow interviews of any employees who might reasonably have information related to such records; and (iv) include a similar right of CPR to audit records and interview staff in any subcontract related to performance of this Agreement. All non-State auditors will be required to comply with Manager's policies and procedures, including agreement in writing by each individual participating in the audit or examination to abide by Manager's confidentiality and security requirements.

8. Damage to Persons or Property. Manager shall be liable for damages arising out of injury to the person and/or damage to the property of CPR, the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of Manager, designated by the State for any purpose, during or subsequent to the provision of Laboratory Services Management Assistance, either at Manager's site or at the State's or CPR's place of business, but only to the extent that the injury or damage was caused by the fault or negligence of Manager.

9. Indemnification. Manager shall indemnify, defend and save harmless CPR, the State, their officers, agents and employees from any and all claims and losses accruing

or resulting to any person, firm or corporation who may be injured or damaged by Manager in the performance of this Agreement.

10. Insurance. Manager shall maintain, at its own cost, those insurance coverages set forth in Exhibit B to this Agreement and comply with the terms of Exhibit B.

11. Circumstances Beyond Control/ Disclaimer of Liability. Except for the payment of money, neither party shall be deemed in default of this Agreement to the extent that any delay or failure in performance of its obligations results from strikes, shortages, riots, insurrection, fires, flood, storm, explosion, acts of God, war, government act ion, earthquakes, acts of terrorism, or any other cause which is beyond the reasonable control of such party. Negligence by either party is not to be considered a circumstance beyond the party's reasonable control. EXCEPT FOR ANY CLAIM, LOSS OR DAMAGE ARISING UNDER SECTIONS 9 OR 12 OF THIS AGREEMENT, IN NO EVENT SHALL MANAGER'S LIABILITY FOR ANY CLAIMS, LOSSES OR DAMAGES (WHETHER IN CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT (IN WHOLE OR IN PART), OR SOW OR EXHIBIT HERETO, OR ANY SERVICES PROVIDED HEREUNDER OR OTHERWISE TO CPR, EXCEED TWICE THE AMOUNT PAYABLE OVER THE INITIAL TERM OF THIS AGREEMENT TO MANAGER. EXCEPT FOR ANY CLAIM, LOSS OR DAMAGE ARISING UNDER SECTIONS 9 OR 12 OF THIS AGREEMENT, UNDER NO CIRCUMSTANCES WHATSOEVER WILL MANAGER BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, ON ANY THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOSSES RESULTING FROM BUSINESS INTERRUPTION OR LOSS OF DATA, EVEN IF MANAGER HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES, HOWEVER CAUSED.

12. Confidentiality.

12.1 Confidential Information. Each party receiving Confidential Information of the other party ("**Recipient**") shall retain in confidence and require its employees, agents and subcontractors to retain in confidence all Confidential Information of a party that discloses Confidential Information ("**Discloser**"). "**Confidential Information**" means information of a confidential or proprietary nature, in written, oral or other form, which is directly related to the business of the Discloser, whether or not such information has been marked by Discloser as "confidential" or "proprietary" . Recipient shall retain Discloser's Confidential Information in the same manner Recipient retains its own Confidential Information, but in no event less secure than a reasonable manner. All Confidential Information shall be protected by the Recipient from unauthorized use and disclosure. Confidential Information shall remain the sole property of the Discloser and shall not be disclosed to any third party without Discloser's express written consent (except, solely for Recipient's internal business needs, to consultants and subsidiaries who are bound by a written agreement with Recipient to maintain the confidentiality of such Confidential Information in a manner consistent with this Agreement). Notwithstanding the foregoing, the Recipient shall not be required to keep confidential

any data or information which is or becomes publicly available, is already rightfully in Recipient's possession, is independently developed by Recipient outside the scope of this Agreement, or is rightfully obtained from third parties.

12.2 HIPAA and Privacy Law Compliance. All inmate/patient medical information and data is the Confidential Information of CPR or the State. Manager shall comply with all applicable patient privacy laws, including, but not limited to, California Civil Code §§ 56 et seq. and the Health Insurance Portability and Accountability Act and its regulations ("HIPAA"). Manager shall comply with the Business Associate Addendum set forth in Exhibit C to this Agreement. For the purposes of the Business Associate Addendum, CDCR shall be a third party beneficiary.

12.3 Mandatory Reference. Notwithstanding Section 12.1 above, Manager shall publicize the fact that CPR is a customer, list CPR's name on Manager's standard customer lists and include CPR as a reference with all future governmental customers and potential customers.

13. Nondiscrimination. During the performance of this Agreement, Manager 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. Manager and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Manager and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Cal. Gov. Code § 12990 et seq.) and the applicable regulations promulgated thereunder (2 C.C.R. §§ 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Cal. Gov. Code § 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Manager 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. Manager shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

14. National Labor Relations Board Certification. Manager 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 Manager within the immediately preceding two year period because of Manager'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 § 10296.

15. Drug-Free Workplace Certification. Manager shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Cal. Gov. Code § 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 Cal. Gov. Code § 8355(a);

(b) establish a Drug- Free Awareness Program as required by Cal. Gov. Code § 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 Cal. Gov. Code § 8355(c), that every employee who works on the proposed or resulting Agreement:

(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 Agreement.

16. Sweatfree Code of Conduct. Manager declares under penalty of perjury that no equipment, materials, or supplies furnished to CPR pursuant to the Agreement 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. Manager further declares under penalty of perjury that it adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website, located at www.dir.ca.gov, and PCC § 6108. Manager shall cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of CPR, the State, the Department of Industrial Relations, or the Department of Justice to determine Manager's compliance with the requirements under this section.

17. Recycling Certification. Manager shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the PCC § 12200, in products, materials, goods, or supplies offered or sold to CPR, 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.

18. Child Support Compliance Act. Manager 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 Manager, 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.

19. Darfur Contracting Act. Effective January 1, 2009, all Invitations for Bids (IFB) or Requests for Proposals (RFP) for goods and services must address the requirements of the Darfur Contracting Act of 2008 (Act). (Public Contract Code sections 10475, et seq.; Stats. 2008, Ch. 272). The Act was passed by the California Legislature and signed into law by the Governor to preclude State agencies generally from contracting with “scrutinized” companies that do business in the African nation of Sudan (of which the Darfur region is a part), for the reasons described in Public Contract Code section 10475.

Offerors are required to submit the Darfur Contracting Act Certification forms as an Attachment of their RFP response. These forms will be provided in the bidder’s library.

20. Domestic Partners. Manager may elect to offer domestic partner benefits to Manager’s employees in accordance with PCC § 10295.3. However, Manager cannot require an employee to cover the costs of providing any benefits, which have otherwise been provided to all employees regardless of marital or domestic partner status.

21. Conflict of Interest. Manager shall comply with the State law provisions in PCC §§10410 and 10411 regarding the hiring or engagement of current or former State employees to furnish services under or be involved with this Agreement. If Manager violates any provisions of §§ 10410 and 10411, this Agreement shall be void pursuant to PC C § 10420.

22. Air or Water Pollution Violation. Under the State law, Manager shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

23. Third Party Beneficiary. Except as otherwise provided, nothing in this Agreement shall be construed as giving any third party any right, remedy or claim.

24. Attorneys Fees and Costs. If any dispute arises out of or related to this Agreement, the prevailing party shall recover all reasonably incurred attorneys’ fees and costs.

25. Complete Integration. All exhibits and attachments to this Agreement are hereby incorporated into and made a part of this Agreement as if fully set forth in the body of the Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, representations and understandings of Manager and CPR.

26. Agreement Modification. No supplement, modification, amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Agreement is binding on the parties.

27. Severability. If any provision of this Agreement is declared unlawful, void or unenforceable, then that provision shall be severed and will not affect the validity and enforceability of the remaining provisions. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

28. Governing Law and Venue. This Agreement shall be governed by and shall be interpreted in accordance with the laws of the State of California, without reference to its principles or rules of conflicts of laws. The federal and state courts in Sacramento, California shall have venue and jurisdiction over any dispute arising under this Agreement.

29. Assignment. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, except that CPR may assign, sublicense or otherwise transfer this Agreement or any right granted under this Agreement without the prior written consent of Manager to the CDCR or any agency of the State of California which is established to meet the requirements and obligations of the CDCR or is a successor to the responsibilities of CPR. This Agreement and the conditions contained herein shall apply to, be binding upon, and inure to the assignees, successors, agents and assigns of Manager and CPR.

30. Waiver of Rights. Any action or inaction by CPR or failure of CPR on any occasion to enforce any right or provision of the Agreement shall not be construed to be a waiver by CPR of its rights hereunder and shall not prevent CPR from enforcing such provision or right on any future occasion. The rights and remedies of CPR herein are cumulative and are in addition to any other rights or remedies that CPR may have at law or equity.

31. Construction. This Agreement shall not be construed against the party preparing it, but shall be construed as if both CPR and Manager jointly prepared this Agreement, and any uncertainty and ambiguity shall not be interpreted against a party.

32. Notice. Except where otherwise provided herein, notices provided for herein shall be in writing and sent via certified mail, return receipt requested to the contact addresses set forth on the signature page. Notice shall be deemed to have been given upon delivery (by post or facsimile) with confirmation of receipt (unless received after 5 pm in the place of receipt, in which case receipt shall be deemed to have occurred on the next business day).

33. Survival. The following Sections of this Agreement shall survive any expiration or termination of this Agreement: 5, 6, 9, 10, 12, 22-32.

34. Execution. By their signature below, each of the following represent that they have authority to execute this Agreement and to bind the party on whose behalf their execution is made. This Agreement may be signed in counterparts, each complete set of which shall constitute an original. Facsimile signatures will have the same force and effect as originals.

California Prison Health Care Services
RFP for Professional Laboratory Services Management Assistance

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date specified below.

**CALIFORNIA PRISON HEALTH CARE
RECEIVERSHIP CORPORATION**

MANAGER

By

By

Printed Name: J. Clark Kelso

Printed Name:

Title: Receiver

Title:

Date:

Date:

EXHIBIT A
Statement of Work (“SOW”)

EXHIBIT B

Insurance Prior to Manager commencing providing Laboratory Services Management Assistance to CPR, and continuing for a period of at least three (3) years following completion of the Laboratory Services Management Assistance, Manager shall, at its sole cost and expense, carry and maintain employer's liability insurance, comprehensive general liability insurance, professional liability insurance and automobile liability insurance (including coverage for owned, non-owned and hired autos) on an "occurrence" basis. Such insurance shall conform to the following requirements:

1. **Workers' Compensation.** Statutory Workers' Compensation covering all employees and complying with all laws of California, and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000).
2. **Commercial General Liability.** Commercial General Liability providing for a limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for bodily injury or property damage combined.
3. **Professional Liability.** Professional Liability insurance including coverage for any errors or omissions caused by negligence in the performance of duties under this Agreement, providing for a limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate.
4. **Automobile.** Commercial Automobile Liability insurance coverage in the sum of not less than One Million Dollars (\$1,000,000) per accident for bodily injury and property damage combined, including coverage for owned, non-owned, and hired automobiles. Manager shall supply CPR with certificates evidencing such insurance and showing CPR and the State of California (and any other party identified as an indemnified party) as additional insured parties under the comprehensive general liability insurance and automobile insurance policies with respect to the Laboratory Services Management Assistance and providing for sixty (60) days' written notice to CPR prior to cancellation or modification thereof. Manager's insurance shall be primary, with any insurance maintained by an additional insured party being non-contributory.

EXHIBIT C

Business Associate Addendum

WHEREAS, Manager, hereinafter referred to in this Exhibit C as “**Business Associate**,” acknowledges that the CDCR, hereinafter referred to in this Exhibit as “**Covered Entity**,” has in its possession data that contains individual identifiable health information as defined by Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated thereunder (“**HIPAA**”);

WHEREAS, Business Associate acknowledges that the fulfillment of the its obligations under the Laboratory Services Management Assistance Agreement (the “Agreement”) may necessitate the exchange of, or access to, data including individual identifiable health information; and,

WHEREAS, the parties desire to comply with federal and California laws regarding the use and disclosure of individually identifiable health information, and in particular with the provisions of HIPAA.

NOW, **THEREFORE**, in consideration of the mutual promises and covenants hereinafter contained, the parties agree as follows:

ARTICLE 1

DEFINITIONS

Terms used, but not otherwise defined, in this Exhibit shall have the meanings set forth below.

1.1 “Individual” means the subject of protected health information or, if deceased, his or her personal representative.

1.2 “Parties” shall mean the Covered Entity and Business Associate. (Covered Entity and Business Associate, individually, may be referred to as a “Party”.)

1.3 “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

1.4 “PHI” shall have the same meaning as the term “protected health information” in 45 CFR §164.501, limited to the information created or received by Business Associate from or on behalf of the Covered Entity.

1.5 “Required By Law” shall have the same meaning as “required by law” in 45 CFR §164.501.

1.6 “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee. Any other terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those terms in the Privacy Rule.

ARTICLE 2

CONFIDENTIALITY

2.1 Obligations and Activities of Business Associate.

Business Associate shall:

- (a) not use or further disclose PHI other than as permitted or required by this Addendum, the Agreement or as Required By Law;
- (b) establish, maintain, and use appropriate safeguards to prevent use or disclosure of the PHI other than as permitted herein;
- (c) report to Covered Entity any use, access or disclosure of the PHI not provided for by this Addendum, or any misuse of the PHI, including but not limited to systems compromises of which it becomes aware and to mitigate, to the extent practicable, any harmful effect that is known to Business Associate as a result thereof. Business Associate shall be responsible for any and all costs (including the costs of Covered Entity) associated with mitigating or remedying any violation of this Addendum;
- (d) enforce and maintain appropriate policies, procedures, and access control mechanisms to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to such information. The access and privileges granted to any such agent shall be the minimum necessary to perform the assigned functions;
- (e) provide access, at the request of Covered Entity, and in the time and manner reasonable designated by Covered Entity, to PHI in a Designated Record Set (as defined in the Privacy Rule), to Covered Entity or, as directed by Covered Entity, to meet the requirements under 45 CFR §164.524 to the extent Business Associate maintains PHI in a Designated Record Set;
- (f) make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner reasonably requested by Covered Entity to the extent Business Associate maintains PHI in a Designated Record Set.
- (g) make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner reasonably requested by Covered Entity or designated

by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule, subject to any applicable legal privilege.

(h) document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528. Said documentation shall include, but not be limited to, the date of the disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, if known, and the purpose of the disclosure. Said documentation shall be made available to Covered Entity upon request.

(i) provide to Covered Entity, in a time and manner reasonably requested by Covered Entity, information collected in accordance with Section 2.1

(j) above to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

(k) promptly notify Covered Entity of all actual or suspected instances of deliberate unauthorized attempts (both successful and unsuccessful) to access PHI. Such notice shall be made to Covered Entity by telephone as soon as practicable after Business Associate becomes aware of the unauthorized attempt, and this telephone notification shall be followed within two (2) business days of the discovery of the unauthorized attempt by a written report to Covered Entity from Business Associate. Business Associate shall, at the same time, report to Covered Entity any remedial action taken, or proposed to be taken, with respect to such unauthorized attempt. Covered Entity shall have the reasonable discretion to determine whether or not any such remedial action is sufficient, and all such remedial action shall be at Business Associate's expense.

(l) maintain and enforce policies, procedures and processes to protect physical access to hardware, software and/or media containing PHI (e.g., hardcopy, tapes, removable media, etc.) against unauthorized physical access during use, storage, transportation, disposition and /or destruction.

(m) ensure that access controls in place to protect PHI and processing resources from unauthorized access are controlled by two -factor identification and authentication: a user ID and a Token, Password or Biometrics.

(n) implement, use and monitor its compliance with appropriate technological, administrative and physical safeguards to prevent the use or disclosure of PHI other than as permitted by this Addendum. Business Associate shall provide Covered Entity with evidence of such safeguards upon Covered Entities request. Covered Entity has the right to determine, in its reasonable discretion, whether such safeguards are appropriate, and to require any additional safeguards reasonably necessary to bring Business Associate into compliance with the Privacy Rule.

(o) If Business Associate is served with legal process (e.g., a subpoena) or request from a governmental agency (e.g., the Secretary) that potentially could require the disclosure of PHI, Business Associate shall provide prompt (i.e., within two (2) business days) written notice (to the extent permitted by law and not prohibited by such governmental agency) of such legal process (including a copy of the legal process served) to the designated person at the Covered Entity. In addition, Business Associate shall not disclose the PHI without the consent of Covered Entity unless pursuant to a valid and specific court order or to comply with a requirement for review of documents or data by a governmental regulatory agency under its statutory or regulatory authority to regulate the activities of either party.

(p) to the extent Business Associate maintains any PHI on its premises, submit to periodic audits by Covered Entity in accordance with the terms of the Agreement verifying Business Associate's compliance with appropriate technological, administrative and physical safeguards to prevent the use or disclosure of PHI other than as permitted by this Addendum, as well as compliance with the terms and conditions pursuant to this Addendum and compliance with state and federal privacy and security laws and regulations related to PHI. Such audit review may be undertaken directly by the Covered Entity or by third parties engaged by the Covered Entity. Business Associate shall cooperate fully with Covered Entity or any such third party in connection with such audits at Covered Entity's expense.

2.2 Disclosures Required By Law. If Business Associate is required by law to disclose PHI, Business Associate will immediately provide Covered Entity with written notice in accordance with Section 2.1(n) above (to the extent permitted by law and not prohibited by such governmental agency) and provide Covered Entity an opportunity to oppose any request for such PHI or to take whatever action Covered Entity deems appropriate.

2.3 Specific Use and Disclosure Provisions.

(a) Except as otherwise limited in this Addendum, Business Associate may use PHI only to carry out the responsibilities of the Business Associate under the Agreement and for the proper internal management and administration of Business Associate.

(b) Except as otherwise limited in this Addendum, Business Associate may only disclose PHI

(i) as Required By Law, or

(ii) in the fulfillment of its obligations under the Agreement and provided that Business Associate has first obtained

(A) the consent of Covered Entity for such disclosure,

(B) reasonable assurances from the person to whom the information is disclosed that the PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and

(C) reasonable assurances from the person to whom the information is disclosed that such person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.4 Obligations of Covered Entity.

(a) Covered Entity will notify Business Associate of any limitations in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

(b) Covered Entity will notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosures of PHI.

(c) Covered Entity will notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(d) For any PHI received by Covered Entity from Business Associate on behalf of a third party or another covered entity, Covered Entity will be bound to the obligations and activities of Business Associate enumerated in Section 2.1 as if and to the same extent Covered Entity was the named Business Associate hereunder.

2.5 Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

2.6 Policy and Procedure Review. Upon request, Business Associate shall make available to Covered Entity any and all documentation relevant to the safeguarding of PHI including but not limited to current policies and procedures, operational manuals and/or instructions, and/or employment and/or third party agreements.

ARTICLE 3

SECURITY

3.1 Security Procedures. Each Party shall employ security procedures that comply with HIPAA and all other applicable state and federal laws and regulations (collectively, the "Law") and that are commercially reasonable, to ensure that transactions, notices, and other information that are electronically created, communicated, processed, stored, retained or retrieved are authentic, accurate, reliable, complete and confidential. Moreover, each Party shall, and shall require any agent or subcontractor involved in the electronic exchange of data to:

(a) require its agents and subcontractors to provide security for all data that is electronically exchanged between Covered Entity and Business Associate;

(b) provide, utilize, and maintain equipment, software, services and testing necessary to assure the secure and reliable transmission and receipt of data containing PHI;

(c) maintain and enforce security management policies and procedures and utilize mechanisms and processes to prevent, detect, record, analyze, contain and resolve unauthorized access attempts to PHI or processing resources;

(d) maintain and enforce policies and guidelines for workstation use that delineate appropriate use of workstations to maximize the security of data containing PHI;

(e) maintain and enforce policies, procedures and a formal program for periodically reviewing its processing infrastructure for potential security vulnerabilities;

(f) implement and maintain, and require its agents and subcontractors to implement and maintain, appropriate and effective administrative, technical and physical safeguards to protect the security, integrity and confidentiality of data electronically exchanged between Business Associate and Covered Entity, including access to data as provided herein. Each Party and its agents and subcontractors shall keep all security measures current and shall document its security measures implemented in written policies, procedures or guidelines, which it will provide to the other Party upon the other Party's request.

ARTICLE 4

MISCELLANEOUS

4.1 Indemnification. Subject to the limitations set forth in the Agreement, Business Associate shall indemnify, defend, and save harmless the State, CDCR, and CDCR's officers, employees and agents, against any and all losses, liabilities, settlements, claims, demands, damages, or deficiencies (including interest) and expenses of any kind (including, but not limited to, reasonable attorneys' fees) arising out of or due to a breach by Business Associate or its subcontractors and agents of the terms of this Addendum, and arising out of Business Associate's negligent acts or omissions in regard to the terms of this Exhibit to the Agreement. The foregoing indemnity is in addition to any other save harmless or indemnification set forth in the Agreement.

4.2 Term and Termination.

(a) Term. The Term of this Addendum shall be effective as of the first date of commencement of Laboratory Services Management Assistance under the Agreement, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

- (b) Termination for Cause. Upon a material breach by Business Associate of this Business Associate Addendum, Covered Entity may
- (i) terminate this Business Associate Addendum and the Agreement;
 - (ii) permit Business Associate to cure the breach;
 - (iii) report the violation to the Secretary; and/or
 - (iv) require Business Associate to take such other action as Covered Entity may request, at Business Associate's expense.

(c) Effect of Termination.

(i) Except as provided in paragraph 4.2(c)(ii), upon termination of this Business Associate Addendum, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(ii) If Business Associate determines that returning the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Covered Entity's agreement that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

4.3 Injunctive Relief. Notwithstanding any rights or remedies provided for in Section 4.3, Covered Entity retains all rights to seek injunctive relief to prevent the unauthorized use of disclosure of PHI by Business Associate or any agent, Manager or third party that received PHI from Business Associate.

4.4 Regulatory References. A reference in this Addendum to a section in the Privacy Rule means the section as in effect or as amended.

4.5 Amendment. The Parties shall take such action as is necessary to amend this Addendum from time to time to the extent necessary for Covered Entity to comply with the requirements of HIPAA and its regulations. All amendments to this Exhibit shall be in writing and signed by both parties through a formal amendment to the entire agreement.

4.6 Survival. The respective rights and obligations of Business Associate and Covered Entity under Sections 4.1 and 4.2(c) of this Addendum shall survive the termination of this Addendum.