**SPECIAL TERMS AND CONDITIONS & ADDITIONAL PROVISIONS**

1. **Dispute Resolution** (Supersedes provision number 6, Disputes, of Exhibit C)

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

Pending the final resolution of any such contract disputes, including network start up cost(s)/service fee(s), claim issues, Contractor agrees to proceed with the performance of the Agreement, including the delivering of goods or providing of services. Contractor’s failure to proceed shall constitute a material breach of the Agreement.

The Agreement shall be interpreted, administered, and enforced according to the laws of the State of California. The parties agree that any suit brought hereunder shall have venue in Sacramento, California. The parties are hereby waiving any claim or defense that such venue is not convenient or proper.

1. **Contract Disputes**
2. **Verbal Inquiry**

Contractor and the program or Institution/Facility contract liaison, or designee for which the goods are being delivered or the services are being performed, shall first attempt in good faith to resolve the dispute or claim by informal discussion(s). The parties agree that CCHCS, Medical Contracts Section, shall be used as a resource in solving potential contract disputes. The outcome of the Verbal Inquiry shall be documented in writing (i.e., via email, fax, or letter) by the program, Institution/Facility contract liaison or designee, or CCHCS, Medical Contracts Section and sent to all affected parties.

1. **Informal Appeal**

If the issue is not resolved at the Verbal Inquiry level, Contractor shall send a written Informal Appeal to the CCHCS Medical Contracts Section, Health Program Manager III, within thirty (30) calendar days following the date of the outcome from the Verbal Inquiry level. The written Informal Appeal shall specify: the issue(s) of dispute, legal authority or other basis for Contractor’s position, supporting evidence including documentation of prior informal discussions between Contractor and CCHCS regarding the issue, and remedy sought, with the CCHCS Medical Contracts Section Manager or designee at the following address:

Informal Appeal

Health Program Manager III

Medical Contracts Section

California Correctional Health Care Services

P. O. Box 588500

Elk Grove, CA 95758

The CCHCS Medical Contracts Section Manager or designee shall issue a written decision in response to Contractor’s Informal Appeal within fifteen (15) calendar days of the receipt of the Informal Appeal. The written decision shall either: (1) document the dispute settlement and what, if any, conditions were reached; or, (2) document the reason(s) the dispute could not be resolved informally and provide notification to Contractor of its option to file a Formal Appeal within thirty (30) calendar days of the date of the written decision.

1. **Formal Appeal – Administrative Resolution**

If the dispute or claim is still not resolved to Contractor’s satisfaction by the Informal Appeal process, Contractor may file a written Formal Appeal, within thirty (30) calendar days of the date of the Informal Appeal decision from CCHCS, with the Deputy Director, Business Services, CCHCS at the following address:

Formal Appeal

Deputy Director

Business Services

California Correctional Health Care Services

P. O. Box 588500

Elk Grove, CA 95758

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

The CCHCS Deputy Director, Business Services, or representative shall make a determination on the issue and respond in writing within thirty (30) working days of receipt of the formal appeal, indicating the decision reached. Contractor shall be notified if an extension of time is necessary.

1. **Further Resolution**

If the dispute is not resolved by the Formal Appeal process to Contractor’s satisfaction, or Contractor has not received a written decision from CCHCS within thirty (30) calendar days, or other mutually agreed extension, Contractor may thereafter pursue its right to institute other dispute resolution process(es), if any, available under the laws of the State of California.

1. **Billing Disputes**
2. **Final Payment**

The acceptance by Contractor of final payment shall release the CDCR/ CCHCS from all claims, demands, and liability to Contractor for all acts or omissions of CDCR/CCHCS and others relating to or arising out of this work except for any claim previously accepted and/or in process of resolution. However, CDCR/CCHCS’s issuance of payments generally or of the final payment specifically shall not waive CDCR/CCHCS’s right to seek recovery of overpayments in the manner set forth in this Agreement.

1. **Informal Medical Claim Payment Inquiry**

If the issue is not resolved at the Verbal Medical Claim Payment Inquiry level as referenced in Exhibit B of the Agreement, Contractor should proceed with the Appeal process outlined below.

1. **Formal Claims Appeal**

For disagreements regarding claim payments, or claim denials by CCHCS for a claim billed under the Agreement, Contractor may submit an Appeal letter within thirty (30) calendar days following the determination at the Verbal Medical Claim Payment Inquiry level to the Healthcare Invoicing Branch (HIB) to the address below:

Attn: Appeals Team

Healthcare Invoicing Branch

California Correctional Health Care Services

P.O. Box 588500

Elk Grove, CA 95758

The Claims Appeal letter shall be sent with a copy of the claim originally submitted, a cover page detailing the reason(s) why Contractor believes the claim was underpaid, overpaid, or denied in error, any documentation provided by CCHCS explaining the payment adjustment and any other documentation in support of the Appeal.

The Appeals Team shall review the Claims Appeal for payment or non-payment. If the review determines that CCHCS owes additional compensation, the Appeals Team shall process the reimbursement. If the review determines that CCHCS owes no additional compensation, the Appeals Team shall issue a written decision to Contractor explaining the payment denial within thirty (30) calendar days. If the review determines that Contractor was overpaid, the Audits and Refunds Team will issue a refund recovery letter to Contractor within sixty (60) calendar days. CCHCS, in its sole discretion, may recover overpayments in the manner set forth in Provision 57 of this exhibit.

1. **First Level Appeal**

If the claim is still not resolved to Contractor’s satisfaction at the Formal Claims Appeal level, Contractor may file, within thirty (30) calendar days after the date of the Claims Appeal response, a written First Level Appeal with the Associate Director, CCHCS, Healthcare Invoicing Branch, at the following address:

Attn: First Level Appeal

Associate Director

Healthcare Invoicing Branch

California Correctional Health Care Services

P. O. Box 588500

Elk Grove, CA 95758

The Associate Director, CCHCS, HIB or designee shall issue a written decision to Contractor within fifteen (15) calendar days from receipt of Contractor’s First Level Appeal. The written decision shall either: (1) document the dispute settlement and what, if any, conditions were reached; or, (2) document the reason(s) the dispute could not be resolved and provide notification to Contractor of its option to file a Second Level Appeal within thirty (30) calendar days of the date of the written decision.

1. **Second Level Appeal – Administrative Resolution**

If the dispute or claim is still not resolved to Contractor’s satisfaction by the First Level Appeal process, Contractor may file a written Second Level Appeal, within thirty (30) calendar days of the date of the First Level Appeal decision from CCHCS, with the Director, Health Care Policy and Administration Services, CCHCS at the following address:

Second Level Appeal

Director

Health Care Policy and Administration

California Correctional Health Care Services

P. O. Box 588500

Elk Grove, CA 95758

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

The CCHCS Director, Health Care Policy and Administration shall make a determination on the issue and respond in writing within thirty (30) working days of receipt of the Second Level appeal, indicating the decision reached. Contractor shall be notified if an extension of time is necessary.

1. **Further Resolution**

If the dispute is not resolved by the Second Level Appeal process to Contractor’s satisfaction, or Contractor has not received a written decision from CCHCS within thirty (30) calendar days, or other mutually agreed extension, Contractor may thereafter pursue its right to institute other dispute resolution process(es), if any, available under the laws of the State of California.

1. **Limitation of Scope of Process**

The dispute process set forth in Section 1, Dispute Resolution Provision, is not applicable for contracts that have been terminated in accordance with Section 2, Right to Terminate provision of this Exhibit.

1. **Changes to Contact Names and Addresses**

CDCR/CCHCS may change the name or address of any person or entity noted in Section 1 by providing notice in the manner provided in this Agreement, and any such change shall not require a written amendment to this Agreement.

1. **Right to Terminate** (Supersedes provision number 7, Termination for Cause, of Exhibit C)
2. **Termination of Agreement without Cause**

Either party may terminate this Agreement without cause by giving not less than thirty (30) calendar days written notice to the other party. Any such termination shall be delivered via certified mail, specifying the date upon which such termination becomes effective.

Notwithstanding provisions in this Agreement to the contrary, if the basis for termination without cause is the provision of services by a health care network provider, including, but not limited to, health plan, preferred provider organization, or other health care network manager, CDCR/CCHCS may terminate this Agreement without cause and will notify the Contractor in writing when doing so.

1. **Termination of Agreement for Cause**
2. **Immediate Termination**

CDCR/CCHCS may immediately terminate this Agreement under circumstances such as the following, or other such circumstances as would materially prejudice the right of CDCR/CCHCS Patients and/or Division of Juvenile Justice (DJJ) Youth under this Agreement. The Agreement termination shall be effective as of the date indicated on CDCR/CCHCS’s notification to Contractor.

1. If CDCR/CCHCS determines, based on reliable and factual information, that management practices adopted by Contractor or the current financial condition of Contractor interfere with the delivery of services or reduce the quality of such services; or,
2. If CDCR/CCHCS determines, in its sole discretion, based on reliable and factual information that the Contractor is failing to maintain sufficient resources to perform under the Agreement successfully. This includes, but is not limited to, having personnel in sufficient numbers and with the skills required who are willing to provide services under the Agreement; or,
3. If CDCR/CCHCS determines, in its sole discretion, based on reliable and factual information, that the Contractor’s actions place CDCR/CCHCS at risk for claims against CDCR/CCHCS; or,
4. If CDCR/CCHCS determines, based on reliable and factual information, there is a substantial probability that Contractor is unable to render medical services to CDCR/CCHCS Patients and/or DJJ Youth; or,
5. If CDCR/CCHCS determines, based on reliable and factual information, that any State or federal regulatory and/or law enforcement agency has taken any enforcement action (administrative or otherwise) against Contractor, including but not limited to any investigation of Contractor or Providers; or,
6. If CDCR/CCHCS determines, based on reliable and factual information, that the Institution/Facility is experiencing difficulty in securing treatment from Contractor; or,
7. If CDCR/CCHCS determines, based on reliable and factual information, that Contractor has failed to meet the terms, conditions and/or responsibilities of the Agreement; or,
8. If CDCR/CCHCS determines, based on reliable and factual information that the services rendered were below the applicable standards for professional care.
9. **Termination for Insolvency**

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

1. **Supporting Documentation**

CDCR/CCHCS may require the Contractor to disclose any information that CDCR/CCHCS deems necessary to determine compliance with the requirements of this Agreement, including, but not limited to, certified financial statements, documentation reflecting the Contractor’s ability to immediately provide substitute personnel, and documentation reflecting the Contractor’s ability to comply with the indemnification requirements of this Agreement. If such information is required, the Contractor will be so notified and will be permitted five (5) business days to submit the information requested. Failure to provide the requested information may be grounds for termination of the Agreement for cause.

1. **Obligations Upon Termination**

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

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

1. Deliver to CDCR/CCHCS a full accounting of the status of claims; and
2. Deliver to CDCR/CCHCS all property and documents of CDCR/CCHCS then in the custody of Contractor and Providers.
3. Deliver to CDCR/CCHCS all reports required from this Agreement.

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

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

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

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

1. **Alternative Arrangements Upon Termination**

Upon cancellation of this Agreement, Contractor agrees to assist CDCR/CCHCS in securing alternative arrangements for the provision of care from another CDCR/CCHCS contracted facility or health care provider for those CDCR/CCHCS Patients and/or DJJ Youth receiving inpatient care at the time of termination. Contractor further agrees to continue to provide adequate levels of health care services to CDCR/CCHCS Patients and/or DJJ Youth until alternative arrangements can be obtained. The rate of pay shall be consistent with the terms of this Agreement.

1. **Assurances Upon Termination**

Upon the termination of this Agreement for any reason whatsoever, Contractor shall cooperate fully with CDCR/CCHCS in order to effect an orderly transition of CDCR/CCHCS Patients and/or DJJ Youth to another facility. The foregoing shall include, without limitation, attending such post-termination meetings as shall be reasonably requested by CDCR/CCHCS.

1. **Governing Forum and Venue**

This Agreement shall be interpreted, administered, and enforced according to the laws of the State of California (without regard to any conflict-of-laws provision), except as preempted by federal law. Forum for any suit brought hereunder shall be California, and the venue for any suit brought hereunder shall be in the State or federal courts sitting in the County of Sacramento, California, the parties hereby waiving any claim or defense that such forum or venue is not convenient or proper. Each party agrees that any such court shall have in personam jurisdiction over it and consents to personal jurisdiction for this purpose in the forum chosen by the plaintiff bringing the action.

1. **Remedies Other Than Termination**

Notwithstanding other provisions of this Agreement, and at the sole discretion of CDCR/CCHCS, CDCR/CCHCS reserves the right to take the following actions in response to Contractor’s failure to comply with the terms and conditions outlined in Exhibit A – Scope of Work in lieu of exercising its rights referenced in Section 2, Right to Terminate provision of this Exhibit, when CDCR/CCHCS deems these remedies more appropriate:

1. Withhold payment for specified services, or
2. Suspend a Contractor from providing services for a specified period of time.

CDCR/CCHCS reserves the State’s right to execute the remedies under Provision 3.a. and 3.b. above if the failure constitutes a material breach of this Agreement and if Contractor does not cure such failure within the time frame stated in the State’s cure notice, which in no event shall be less than fifteen (15) calendar days, unless the Scope of Work, in CDCR/CCHCS’s sole discretion, necessitates a shorter period.

1. **Stop Work**
2. CDCR/CCHCS, at any time, may issue a notice to suspend performance or stop work under this Agreement. The initial notification shall be a written directive issued by the CDCR/CCHCS. Upon receipt of said notice, the Contractor is to suspend and/or stop all, or any part, of the work called for by this Agreement.
3. Written confirmation of the suspension or stop work notification with directions as to what work (if not all) is to be suspended and how to proceed will be provided within thirty (30) calendar days of the initial notification. The resumption of work (in whole or part) will be at CDCR/CCHCS’s discretion and upon receipt of written confirmation.
4. Upon receipt of a suspension or stop work notification, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize or halt the incurrence of costs allocable to the performance covered by the notification during the period of work suspension or stoppage.
5. At the sole discretion of CDCR/CCHCS, within thirty (30) calendar days or more of the issuance of a suspension or stop work notification, CDCR/CCHCS shall either:
6. Cancel, extend, or modify the suspension or stop work notification; or
7. Terminate the Agreement as provided for in the Right to Terminate clause of the Agreement.
8. If a suspension or stop work notification issued under this clause is cancelled or the period of suspension or any extension thereof is modified or expires, the Contractor may resume work only upon written concurrence of CDCR/CCHCS.
9. If the suspension or stop work notification is cancelled and the Agreement resumes, changes to the services, deliverables, performance dates, and/or contract terms resulting from the suspension or stop work notification shall require an amendment to the Agreement.
10. CDCR/CCHCS shall not be liable to the Contractor for loss of profits because of any suspension or stop work notification issued under this clause.
11. **Responsibility Hearing**

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

In CDCR/CCHCS’s sole discretion, the scope of the responsibility hearing:

1. May be limited to other contracts for the same type of services set forth in this Agreement, or may be expanded to apply to other contracts, including all contracts that CDCR/CCHCS awards; and
2. May be limited to a defined period of time, or may be expanded to a ban of future agreements for an indefinite period of time.

The notice of responsibility hearing shall indicate the scope of the hearing and the process and procedures that CDCR/CCHCS and the Contractor shall follow for the hearing.

1. **Computer Software Management Memo**

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

1. **Liability for Nonconforming Work**

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

1. **Liability for Loss and Damages**

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

1. **Temporary Nonperformance**

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

1. **Extension of Terms**

This Agreement may be amended to extend the term if it is determined to be in the best interest of the State. Upon signing the amendment, Contractor hereby agrees to provide services for the extended period at the rates specified in the original Agreement. Therefore, Contractor’s rates are submitted with the understanding that those same rates will be in effect, if the contract is amended to extend the term. The parties agree that CDCR/CCHCS has considered this fact in its evaluation of the rates bid or negotiated for this Agreement.

1. **Accounting Principles / No Dual Compensation**

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

1. **Subcontractor/Provider**

Contractor is required to identify, on Form CCHCS-MC-391 or its successors provided by CDCR/CCHCS, all Subcontractors who will perform labor or render services in the performance of this Agreement. Additionally, Contractor shall notify CDCR/CCHCS within ten (10) state business days, of any changes to the Subcontractor information.

1. **Contractor’s/Provider’s/Employees of Contractor/Independent Contractors/Sub-Contractors Compliance with All Laws**

Contractor shall be familiar with and agree to follow all requirements of this Agreement and all federal, state, and local statutes and regulations applicable to performance of this Agreement. Contractor shall also ensure that Providers are familiar with and agree to follow all requirements of this Agreement and all federal, state, and local statutes and regulations applicable to performance of this Agreement.

Although Contractor and Providers are independent contractors, not employees, of CDCR/CCHCS or the State, Contractor agrees that, due to the close proximity among CDCR/CCHCS employees, Providers, and CDCR/CCHCS patients and/or DJJ Youth, Providers performing services on the grounds of a CDCR Institution/Facility shall adhere to the same requirements for CDCR/CCHCS employees set forth in Article 2 of Subchapter 5 of Chapter 1 of Division 3 of Title 15 of the California Code of Regulations.

1. **Independent Contractor**

Contractor, Contractor’s staff and providers in performance of this agreement, shall act in an independent capacity and not as officers, employees, or agents of CDCR/CCHCS, or the State.

1. **Expatriate Corporations**

Contractor shall not be an expatriate corporation or a subsidiary of an expatriate corporation as set forth in Public Contract Code, Sections 10286 and 10286.1, and is eligible to contract with CDCR/CCHCS.

1. **Provider (Approval/Disapproval)**

CDCR/CCHCS requires the Contractor to secure the staffing necessary to meet its contractual obligations, and CDCR/CCHCS defers to the Contractor as to how the Contractor’s relationships with its Providers are formed.

Contractor agrees to allow CDCR/CCHCS, in CDCR/CCHCS’s sole discretion, the right to approve, in advance, any Providers, and disapprove the continuing assignment of any Provider. If any Provider of the Contractor is unable to perform, even if due to factors beyond Contractor’s control, Contractor shall immediately provide acceptable substitute Provider.

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

CDCR/CCHCS reserves the right, in its sole discretion, to approve Contractor’s choice of Provider, prior to Provider commencing work. Any requirements for approval of Provider that are specific to this Agreement are set forth in Exhibit A.

CDCR/CCHCS reserves the right, in its sole discretion, to approve Contractor’s substitutions of Provider, prior to substituted Provider commencing work.

CDCR/CCHCS reserves the right, in its sole discretion, to require Contractor to substitute Provider.

In the event any Providers are released from service or denied gate access to a CDCR Institution/Facility, the Contractor shall notify in writing the Chief Executive Officer, Chief Medical Executive, Chief Medical Officer, Chief Nurse Executive, or designee at all other CDCR Institution/Facilities where the Provider provided services. The CCHCS Medical Contracts Section shall also be notified by email to the CCHCS Medical Contracts Help Desk at: cchcshealthcarecontractshelpdesk@cdcr.ca.gov Attn: Health Care Provider Relations Team (HCPRT), within twenty-four (24) hours of the dismissal or denial of gate access.

Contractor must notify CDCR/CCHCS in writing of any changes of Provider. In addition, upon a Provider’s departure or release Contractor must recover and return any State-issued identification provided to Provider to the CDCR Institution/Facility where services were previously performed.

1. **Restricted Employment Areas**
2. Ex-offenders shall not be hired or assigned work in areas which provide access to:
3. Any records pertaining to free staff
4. Sensitive personal or medical information on CDCR/CCHCS Patients and/or DJJ Youth
5. These areas include, but are not limited to, the following:
6. Medical
7. Personnel
8. Records
9. Accounting
10. Data processing

Contractor shall be responsible for all damages associated with breach of this Provision.

1. **Electronic Waste Recycling**

Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance. CDCR/CCHCS electronic data stored upon any Contractor or Provider device must be returned to CDCR/CCHCS immediately and Contractor must certify that CDCR/CCHCS data is removed from Contractor’s and Provider’s devices by either degaussing or shredding per National Institute of Standards and Technology (NIST) Special Publication Series 800-88 and National Industrial Security Program (NISP) Operating Manual (DoD 5220.22) and Clearing and Sanitization Matrix (C&SM) based on The National Security Agency Central Security Service NSA/CSS Policy Manual 9-12, “Storage Device Declassification Manual”.

1. **Licenses and Permits**

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

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

In the event of any conflict, the requirements set forth elsewhere in this Agreement shall govern over the requirements of this Provision.

1. **Excise Tax**

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

1. **Permits and Certifications from State Board of Equalization**

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

1. **Conflict of Interest**

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

1. **Contractors and Their Providers**

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

1. The Agreement service has been identified by CDCR/CCHCS as one where there is a greater likelihood that a conflict of interest may occur;
2. Contractor and/or Provider, pursuant to the Agreement, makes or influences a governmental decision; or
3. Contractor and/or Provider serves in a staff capacity with CDCR/CCHCS and in that capacity participates in making a governmental decision or performs the same or substantially all the same duties for CDCR/CCHCS that would otherwise be performed by an individual holding a position specified in CDCR/CCHCS’s Conflict of Interest Code.
4. **Current State Employees**
5. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
6. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
7. In addition to the above, officers and employees shall also avoid actions resulting in or creating an appearance of:
8. Using an official position for private gain;
9. Giving preferential treatment to any particular person;
10. Losing independence or impartiality;
11. Making a decision outside of official channels; and
12. Affecting adversely the confidence of the public or local officials in the integrity of the program.
13. Officers and employees must not solicit, accept or receive, directly or indirectly, any fee, commission, gratuity or gift from any person or business organization doing or seeking to do business with the State.
14. **Former State Employees**
15. For the two-year (2-year) period from the date he or she left state employment, no former state officer or employee may enter into an Agreement in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the Agreement while employed in any capacity by any state agency.
16. For the twelve-month (12-month) period from the date he or she left state employment, no former state officer or employee may enter into an Agreement with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed Agreement within the 12-month period prior to his or her leaving state service.

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

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

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

If Contractor violates any provision of the above paragraphs, such action by Contractor may, in CDCR/CCHCS’s sole discretion, render this Agreement void.

1. **Disclosure**

Neither the State nor any State employee will be liable to Contractor or its Provider for injuries inflicted by CDCR Inmates, DJJ Youth or Parolees of the State. The State agrees to disclose to Contractor any statement(s) known to State staff made by any CDCR Inmate, DJJ Youth or Parolee, which indicates violence may result in any specific situation, and the same responsibility will be shared by Contractor and Provider in disclosing such statement(s) to the State.

1. **Security Clearance/Fingerprinting**

The State reserves the right to conduct fingerprinting and/or security clearance through the Department of Justice, Bureau of Criminal Identification and Information (BCII), prior to award and at any time during the term of the Agreement, in order to permit Contractor and/or Provider access to State premises. Contractor is responsible for having all Providers obtain a completed Live Scan Background check at Contractor’s cost as part of the credentialing requirements to perform services on-site at the Institutions/Facilities. The State further reserves the right to terminate the Agreement or to bar access to State premises, in the State’s sole discretion, if a threat to security is determined.

1. **Non Eligible Alien Certification**

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

**Provisions 26 through 32 apply to services provided on departmental and/or Institution/Facility grounds:**

1. **Compliance With Requirements of the Americans With Disabilities Act**

Notwithstanding any other Act, statute, regulation or policy, Affiliate agrees to conform all practices, procedures and policies with respect to any and all interactions with patients who are the intended beneficiary of this Agreement in accordance with the Americans with Disabilities Act and the Armstrong Remedial Plan as ordered by the Federal District Court in Armstrong v. Davis and Armstrong v. Schwarzenegger (Case C 94-2307 CW) on January 3, 2001 (filed February 7, 2001), and amended September 9, 2006 and September 11, 2007, and with the intent and purpose to avoid and eliminate discrimination against inmates and parolees with disabilities as defined under the Act and guidelines for compliance in accordance with the Armstrong Remedial Plan, provide equal access to care for those defined qualifying classes of individuals, and ensure effective communication between providers, staff, inmates and parolees at all levels of interaction from assessment and triage, emergency, inpatient, outpatient, surgical or other clinically relevant encounters given the particular accommodation needs of patients who are receiving care under this Agreement.

1. **Bloodborne Pathogens**

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

1. **Tuberculosis (TB) Testing**

In the event that the services required under this Agreement will be performed within a CDCR Institution/Facility/Parole Office/Community Based Program, prior to the performance of contracted duties, Contractor and Providers who are assigned to work with CDCR/CCHCS Patients/DJJ Youth/Parolees on a regular basis shall be required to be examined or tested or medically evaluated for TB in an infectious or contagious stage, and at least once a year thereafter or more often as directed by CDCR/CCHCS. Regular basis is defined as having contact with CDCR/CCHCS Patients/DJJ Youth/Parolees in confined quarters more than once a week.

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

The Form CDC 7336 is required to have completed thirty (30) calendar days or less prior to be provided to CDCR/CCHCS as verification of the testing and evaluation.

All requirements set forth in this Provision shall be entirely at Contractor’s expense, and neither CDCR/CCHCS staff nor CDCR/CCHCS’s TB contractor staff shall perform or read the TB tests.

1. **Primary Laws, Rules, and Regulations Regarding Conduct and Association with State Prison Inmates and Division of Juvenile Justice Youth**

Individuals who are non employees of CDCR/CCHCS, but who are working in and around inmates who are incarcerated, or youth who are housed within California’s Institutions/Facilities or Camps, are to apprise themselves of the laws, rules and regulations governing conduct in associating with inmates or youth. Prior to initial entry onto Institution/Facility grounds, Contractor will receive a summary of the pertinent rules and regulations regarding conduct when non-departmental employees come into contact with inmates or youth.

By signing this contract, Contractor agrees that if the provisions of the contract require Contractor or Provider to enter an Institution/Facility or Camp, Contractor and Provider shall be made aware of and shall abide by the following laws, rules and regulations governing conduct in associating with inmates or youth.

1. Persons who are not employed by CDCR/CCHCS, but are engaged in work at any Institution/Facility or Camp must observe and abide by all laws, rules and regulations governing the conduct of their behavior in associating with inmates or youth. Failure to comply with these guidelines may lead to expulsion from CDCR Institutions/Facilities or Camps.

SOURCE: California Penal Code (PC) Sections 5054 and 5058; California Code of Regulations (CCR), Title 15, Sections 3283, 3285, 3289, 3292, and 3415, and California Welfare and Institution Code (WIC) Section 1712.

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

SOURCE: PC Sections 5054 and 5058; CCR, Title 15, Sections 3304 and 4603; WIC Section 1712.

1. All persons entering onto Institution/Facility or Camp grounds consent to search of their person, property, or vehicle at any time. Refusal by individuals to submit to a search of their person, property, or vehicle may be cause for denial of access to the premises.

SOURCE: PC Sections 2601, 5054 and 5058; CCR, Title 15, Sections 3173, 3267, and 3288, 3289, 3292, and 4697; WIC Section 1712.

1. Persons normally permitted to enter an Institution/Facility or Camp may be barred, for cause, by the CDCR Secretary, Director, Warden, Regional Parole Administrator and/or designee.

SOURCE: PC Sections 2086, 5054 and 5058; CCR, Title 15, Section 3283, 3289, and 4696; WIC Section 1712.

1. It is illegal for an individual who has been previously convicted of a felony offense to enter into CDCR Institutions/Facilities or Camps, or DJJ Youth Institutions/Facilities or Camps without the prior approval of the Warden or officer in charge. It is also illegal for an individual to enter onto these premises for unauthorized purposes or to refuse to leave said premises when requested to do so. Failure to comply with this provision could lead to prosecution.

SOURCE: PC Sections 602, 4570.5 and 4571; CCR, Title 15, Sections 3173, 3283, and 3289; WIC Section 1001.7.

1. Encouraging and/or assisting inmates or youth to escape is a crime. It is illegal to bring firearms, deadly weapons, explosives, tear gas, drugs or drug paraphernalia on CDCR Institutions/Facilities or Camp premises. It is illegal to give inmates or youth firearms, explosives, alcoholic beverages, wireless communication devices or component thereof, tobacco products, narcotics, or any drug or drug paraphernalia, including cocaine or marijuana. It is illegal to give youth sex oriented objects or devices, and written materials and pictures whose sale is prohibited to minors.

SOURCE: PC Sections 2772, 2790, 4535, 4550, 4573, 4573.5, 4573.6, 4574, 4576, and 5030.1; CCR, Title 15, Sections 3172.1, 3188, 3292, 4681 and 4710; WIC Sections 1001.5 and 1152.

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

SOURCE: PC Sections 2540, 2541 and 4570; CCR, Title 15, Sections 3010, 3399, 3401, 3424 and 3425 and 4045; WIC Section 1712.

1. In an emergency situation, the visiting program and other inmate/youth program activities may be suspended.

SOURCE: PC Sections 2086 and 2601; CCR, Title 15, Section 3383, 4002.5 and 4696.

1. For security reasons, volunteers, media, contractors, and guest must not wear clothing that in any way resembles state-issued inmate or youth clothing (blue denim shirts, blue denim pants).

SOURCE: CCR, Title 15, Sections 3174, 3349.2.3(g)(3)(B) and 4696.

1. Interviews with SPECIFIC INMATES are not permitted. Conspiring with an inmate to circumvent policy and/or regulations constitutes a rule violation that may result in appropriate legal action. Interviews with individual youth are permitted with written consent of each youth if 18 years of age or older, or with written consent of a parent, legal guardian, or committing court, if 17 years of age or younger.

SOURCE: CCR, Title 15, Sections 3261.5 and 4700(a)(1).

1. **Prison Rape Elimination Policy**

CDCR/CCHCS is committed to providing a safe, humane, secure environment, free from sexual misconduct. This will be accomplished by maintaining a program to ensure education/prevention, detection, response, investigation and tracking of sexual misconduct and to address successful community re-entry of the victim. CDCR/CCHCS shall maintain a zero tolerance for sexual misconduct in its Institutions, community correctional Facilities, conservation camps and for all offenders under its jurisdiction. All sexual misconduct is strictly prohibited.

As a Contractor with CDCR/CCHCS, you are expected to comply and to ensure Providers’ compliance with this policy as described in Department Operations Manual, Chapter 5, Article 44 and DJJ Institutions and Camps Manual, Chapter 1, Section 1445.

1. **Provider’s Compliance with Institutional Requirements**

By entering into this Agreement, Contractor agrees to acknowledge and adhere to the Secretary’s Digest of Laws related to Association with Prison Inmates, and other bylaws, rules, policies, and procedures that apply to CDCR’s Institutions/Facilities, maintain all CDCR security measures, and provide a safe work environment at all times. Contractor agrees that, prior to commencing service under this Agreement at an Institution and/or Facility, all Providers shall acknowledge and agree to adhere to these requirements. CDCR/CCHCS shall furnish Contractor with a copy of the Secretary’s Digest of Laws related to Association with Prison Inmates upon request. CDCR’s rules, policies, and procedures include the following requirements, with which Contractor and Providers shall comply:

1. Required documents to be carried (e.g., license(s), CDCR identification badge, registry identification, if applicable);
2. Inmate security policies and procedures (no cell phones, pagers, recording devices);
3. Reporting for beginning/ending of shift assignment;
4. Uniform or dress code;
5. Reporting of personal illness;
6. Background investigations, fingerprinting and Digest of Laws Relating to Association with Prison Inmate requirements;
7. Authorization to be on CDCR premises limited to scheduled work hours or orientation;
8. Rules governing gate clearance requirements;
9. Administrative and related service provided policies/procedures;
10. Infection control;
11. California Occupational Safety and Health Administration (CAL OSHA) regulations relating to Bloodborne Pathogens;
12. CDCR Tuberculosis (TB) Exposure Control Plan;
13. Patient/Personal Safety relating to fire, electrical hazards, disaster preparedness, hazardous material, equipment safety and management, Safe Drinking Water and Toxic Enforcement Act of 1986, Employee Right to Know, Advanced Directives and Patient’s Rights;
14. Sexual Harassment;
15. Workplace Violence Prevention Program (WVPP) Zero Tolerance Policy; and
16. Use of Force

Contractor and Provider shall comply with all requirements noted above.

Contractor and Providers may be required to attend an orientation class to review these requirements. If so, that requirement will be set forth elsewhere within this Agreement.

1. **Gate Clearance**

Contractor and Provider must be cleared prior to providing services. Contractor will be required to complete a Request for Gate Clearance for all Providers and other persons entering the Institution/Facility a minimum of ten (10) state business 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/CCHCS 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/Facility 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, individual has deliberately falsified his/her identity, and/or the individual has not complied with any other requirement of this Agreement.

CDCR/CCHCS may deny gate clearance for Contractor or Provider, or decline Contractor or Provider from being allowed to provide services, at one or more CDCR Institutions/Facilities. A determination to deny access to one or more CDCR Institutions/Facilities under this Agreement may, in CDCR/CCHCS’s sole discretion, apply to other contracts under which Contractor or Provider provide services. CDCR/CCHCS may prepare and disseminate on a list the names of persons whose gate clearance has been denied, via a process to be determined in CDCR/CCHCS’s sole discretion. This list shall be a public record.

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

Unless the Agreement contains express language to the contrary, CDCR/CCHCS shall not compensate the Contractor for time spent by Contractor or Provider clearing the Institution’s/Facility’s gate or for time traveling to or from the medical clinic or other location at the Institution/Facility where health care services are provided.

1. **Disabled Veteran Business Enterprise (DVBE)**

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

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

1. **Amendments**

No 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 understandings or Agreement not incorporated in the Agreement is binding on any of the parties. CDCR Institution Executives and Staff do not have authority to make oral or written Agreements to this contract.

1. **Assignment**

No assignment of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understandings or Agreement not incorporated in the Agreement is binding on any of the parties. CDCR Institution Executives and Staff do not have authority to make oral or written Agreements to this contract.

1. **Insurance Requirements**

CDCR/CCHCS may waive application of portions or all of this Provision.

CDCR/CCHCS may change the name or address of any person or entity noted in this Provision 30 by providing notice in the manner provided in this Agreement, and any such change shall not require a written amendment to this Agreement.

Insurance as required herein shall be a condition of the State’s obligation to pay for services provided under this Agreement. Prior to approval of this Agreement and before performing any services, Contractor shall furnish to the State evidence of valid coverage, on behalf of Contractor and any Provider required by this Agreement to be covered by insurance. The following shall be considered evidence of coverage: A certificate of insurance, a “true and certified” copy of the policy, or any other proof of coverage issued by Contractor’s insurance carrier. Binders are not acceptable as evidence of coverage. Providing evidence of coverage to the State conveys no rights or privileges to the State, nor does it insure any State employee or insure any premises owned, leased, or otherwise used by or under the control of the State. It does however, serve to provide the State with proof that Contractor and any Provider are insured at the minimum levels required by the State of California.

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

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

It is necessary for some policies to include the State of California, its officers, agents, employees and servants as additional insured, but only with respect to services performed under the Agreement.

Contractor hereby represents and warrants that Contractor is currently and shall remain, for the duration of this Agreement at Contractor’s own expense, insured as follows:

1. **Commercial General Liability**

Contractor agrees to carry a minimum of One Million Dollars ($1,000,000) per occurrence for bodily injury and property damage liability combined **(Required only if the services are provided at Contractor’s facility/office or if equipment to be brought to the Institutions/Facilities for performance of service).**

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

The California Department of Corrections and Rehabilitation (CDCR) and California Correctional Health Care Services (CCHCS) must be named as the “Certificate Holder” and list the following:

State of California

California Department of Corrections and Rehabilitation (CDCR)

California Correctional Health Care Services (CCHCS)

Medical Contracts Section

P. O. Box 588500

Elk Grove, CA 95758

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

1. **Auto Liability**

Contractor certifies that Contractor and Provider providing services on-site at CDCR Institutions/Facilities shall possess valid motor vehicle liability insurance coverage with limits of no less than One Million Dollars ($1,000,000.00) per occurrence. Such insurance shall cover liability arising out of a motor vehicle including owned, hired, and non-owned motor vehicles. The State reserves the right to request proof of insurance at any time. Coverage shall be maintained throughout the term of this Agreement. In the event Contractor fails to ensure the proper insurance coverage in effect at all times for Contractor and Provider, the State may, in addition to any other remedies it may have, terminate the Agreement.

Contractor agrees to carry automobile liability coverage of $1,000,000 per claim if providing Ambulance services or services using mobile MRI, CT, or Mammography equipment on Institution/Facility grounds, in the performance of services under this Agreement.

1. **Professional Liability**

Contractor agrees to carry a minimum coverage of One Million Dollars ($1,000,000) per claim up to an annual aggregate of Three Million Dollars ($3,000,000) for professional liability.

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

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

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

Contractor also agrees to indemnify, defend and hold harmless the State, its officers, agents and employees from any claims and losses resulting from acts by Contractor’s officers, agents and employees related to the performance of this Agreement.

1. **Workers’ Compensation**

Contractor hereby represents and warrants that Contractor is currently and shall, for the duration of this Agreement, carry workers’ compensation insurance, at Contractor’s expense, or that it is self-insured through a policy acceptable to CDCR/CCHCS, for Contractor and all Providers. Such coverage will be a condition of CDCR/CCHCS’s obligation to pay for services provided under this Agreement.

Prior to approval of this Agreement and before performing any services, Contractor shall furnish to the State evidence of valid workers’ compensation insurance coverage. Contractor agrees that the workers’ compensation insurance shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires or is cancelled at any time during the term of this Agreement, Contractor agrees to give at least thirty (30) calendar days prior notice to CDCR/CCHCS before said expiration date or immediate notice of cancellation. Evidence of coverage shall not be for less than the remainder of the term of the Agreement or, in CDCR/CCHCS’s discretion, for a period of not less than one year. The State reserves the right to verify Contractor’s evidence of coverage. In the event Contractor fails to keep workers’ compensation insurance coverage in effect at all times, the State reserves the right to terminate this Agreement and seek any other remedies afforded by the laws of this State.

The above paragraphs of this Provision are applicable to this Agreement only if the Contractor is required, under relevant statute, regulation, or Court opinion, to provide workers’ compensation coverage for performance of services under this Agreement. However, Contractor shall furnish, within three (3) state business days following CDCR/CCHCS’s request, either 1) a copy of the certificate of insurance, a “true and certified” copy of the policy, or any other proof of coverage issued by Contractor’s insurance carrier reflecting workers’ compensation coverage for all Providers; or 2) written confirmation, in a manner defined by CDCR/CCHCS, that workers’ compensation coverage is not required for Provider.

Contractor also agrees to indemnify, defend and hold harmless the State, its officers, agents and employees from any and all claims by Provider, and/or anyone representing the Contractor, related to any non-performance of this section.

1. **Aircraft Liability**

Contractor agrees to carry a minimum of Five Million Dollars ($5,000,000) per claim for bodily injury and property damage liability combined.

The policy must include the State of California, its officers, agents, employees and servants as additional insured, but only with respect to work performed for the State of California.

1. **Notice of Attorney General Provision – Government Code Section 12511.5**

The Attorney General may defend a public or private provider of health care, as defined in Section 56.05 of the Civil Code, including Contractor and its Providers against any claim that the civil rights of a person in state custody were violated in the provision of health care services, where those services were provided under contract with, or under the control of, the California Department of Corrections and Rehabilitation. Defense of the provider of health care is conditioned upon maintaining insurance for professional negligence, as required under this Agreement.

1. **Authority**

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

Contractor hereby recognizes that this Agreement is also entered into under the authority of the Receiver appointed under Plata v. Brown in United States District Court for the Northern District of California, Case No. C01-1351 TEH, which places the responsibility for all medical care of CDCR institutionalized public offenders with the Receiver. During the existence of the Receivership, references in this Agreement to “California Department of Corrections and Rehabilitation,” “CDCR”, California Correctional Health Care Services,” “CCHCS,” “California Department of Corrections and Rehabilitation / California Correctional Health Care Services,” and “CDCR/CCHCS” shall all refer to the area of California Department of Corrections and Rehabilitation, California Correctional Health Care Services, that reports to the Receiver.

1. **Small Business and DVBE Participation – Commercially Useful Functions**

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

1. **Duly Organized**

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

1. **Authorizations**

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

1. **Reimbursement for the Paroled**

Contractor understands and agrees that CDCR/CCHCS does not have statutory authority to render payment for services provided to Parolees (California Code of Regulations Title 15, Section 3356), except for services provided to medical Parolees (Penal Code Section 3550). CDCR/CCHCS shall make a good faith effort to notify Contractor if a CDCR/CCHCS Patient’s and/or DJJ Youth’s parole date is expected to occur while the CDCR/CCHCS Patient and/or DJJ Youth is under Contractor’s care.

CDCR/CCHCS shall assist in providing for appropriate follow-up care to include:

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

Contractor agrees that under no circumstances shall the parole date prevent a CDCR/CCHCS Patient and/or DJJ Youth from receiving emergency medical services or result in the premature discharge of a CDCR/CCHCS Patient and/or DJJ Youth.

1. **Contracts Exempt from Public Disclosure**

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

1. **Health Records**
2. Health records shall be kept in accordance with CCR, Title 22, Section 70751, on all CDCR/CCHCS Patients and/or DJJ Youth admitted for treatment and CDCR/CCHCS Patients and/or DJJ Youth receiving emergency services, outpatient services and/or outpatient surgeries. All required CDCR/CCHCS Patient and/or DJJ Youth health records, either originals or accurate reproduction of the contents of such originals, shall be maintained by Contractor in such form as to be legible and readily available upon request by authorized representatives of CDCR, CCHCS, and any other person authorized by law to make such a request.
3. Contractor shall safeguard the information in all health records of CDCR/CCHCS Patients and/or DJJ Youth against loss, defacement, tampering or use by unauthorized persons per item 39, Confidentiality of Health Information, below.
4. CDCR/CCHCS Patient and/or DJJ Youth health records including x-ray films or reproductions thereof shall be preserved safely for a minimum of seven (7) years following discharge of the CDCR/CCHCS Patient and/or DJJ Youth in accordance with CCR, Title 22, Section 70751.
5. Contractor shall provide copies of CDCR/CCHCS Patient and/or DJJ Youth health records or information within health records, as requested by CDCR/CCHCS, at no additional charge.
6. **Right to Receive and Release Information**

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

1. **Confidentiality of Health Information**

CDCR/CCHCS and Contractor agree that all CDCR/CCHCS Patient and/or DJJ Youth health information is identified as confidential and shall be held in trust and confidence and shall be used only for the purposes contemplated under this Agreement.

Contractor by acceptance of this Agreement is subject to all of the requirements of the federal regulations implementing the Health Insurance Portability and Accountability Act (HIPAA) of 1996; the Health Information Technology for Economic and Clinical Health Act - Public Law 111-005 (HITECH Act), the related privacy and security regulations at 45 CFR Parts 160 and 164; the California Government Code Section 11019.9; California Civil Code Section 56, et seq.; and California Civil Code Section 1798, et seq.; regarding the collections, maintenance, and disclosure of personal and confidential information about individuals. Attached as Exhibit “G” and incorporated herein is a Business Associate Agreement which memorializes the parties’ duties and obligations with respect to the protection, use, and disclosure of protected health information.

1. **Confidentiality of Data**

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

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

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

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

1. **Provider Misconduct and/or Contractor, Employee of Contractor, Sub-Contractor, Independent Contractor Misconduct**

**Agreements with Private Entities**

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

1. **Hiring Considerations**

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

1. **Physician Ownership and Referral Act of 1993**

In accordance with the Physician Ownership and Referral Act of 1993, Contractor shall not refer any CDCR/CCHCS Patient and/or DJJ Youth to any health care provider or health-related facility if Contractor has a financial interest with that health care provider or health-related facility.

Contractor may make a referral to or request consultation from a sole source health care provider or health-related facility in which financial interest is held if Contractor is located where there is no alternative provider of service within either twenty-five (25) miles or forty (40) minutes traveling time. Contractor shall disclose, in writing, to CDCR/CCHCS Contractor’s financial interest at the time of referral or request for consultation. In no event, will this prohibit CDCR/CCHCS Patients and/or DJJ Youth from receiving emergency health care services.

1. **Quality Assurance**

Contractor agrees to maintain an active, systematic process based on objective and measurable criteria by which to monitor and evaluate the quality and appropriateness of CDCR/CCHCS Patient and/or DJJ Youth health care services and to provide assurances that those services rendered were cost effective, medically necessary, and delivered with the assurance of quality.

Contractor agrees to maintain a mechanism for reporting the results of these activities to CDCR/CCHCS. Contractor shall, as requested, provide CDCR/CCHCS with Patient and/or DJJ Youth data needed for the purposes of updating, enhancing or modifying the CCHCS Medical Standards of Care health care policy. CDCR/CCHCS Patient and/or DJJ Youth data requested shall include patient complications, patient mortality, instability at discharge/transfer, post-discharge complication rate, post-discharge mortality rate, and readmission rate. Additional data may be provided to CCHCS upon request when endorsed in writing and agreed upon by both parties.

1. **Quality Assurance and Financial Audits/Reviews**
2. CDCR/CCHCS reserves the right at its expense to make periodic quality of care audits and reviews for health care services rendered to CDCR/CCHCS Patients and/or DJJ Youth. The purpose of these audits or reviews is to verify Contractor’s compliance with the performance provisions, scope of work, terms and conditions selected for review in this Agreement, and compliance with State laws and regulations and/or CDCR/CCHCS policies and guidelines.
3. CDCR/CCHCS may make periodic audits at its expense regarding the quality of medical care rendered to CDCR/CCHCS Patients and/or DJJ Youth as well as verify compliance with the terms and conditions pursuant to this Agreement and compliance with State laws and regulations, including adherence to CDCR/CCHCS policies and guidelines. CDCR/CCHCS may also audit and examine records and accounts, which pertain, directly or indirectly to the Contractor. Contractor shall cooperate with such auditors; however, such audit shall not interfere with the delivery of health care services.
4. Subject to applicable law, audit/review may be undertaken directly by CDCR/CCHCS or by third parties engaged by CDCR/CCHCS, including accountants, consultants and physicians. Contractor shall cooperate fully with such auditors; however, such audit shall not interfere with the administration of Contractor or with the delivery of health care services.
5. All adjustments, payments, and reimbursements determined by CDCR/CCHCS or its representatives to be necessary by such audit/review shall be effected promptly by Contractor upon issuance of a final audit report, except for portions of that report which are challenged or appealed by Contractor. In the case of challenge or appeal, Contractor shall effect the adjustment, payment or reimbursement immediately upon a settlement, or pursue remedy through the dispute resolution provisions set forth in Section 1 of this Exhibit.
6. Physicians Only: Contractor does not waive its right under California Evidence Code Section 1157 et seq. The CDCR/CCHCS recognizes that the records and proceedings of Contractor’s committees responsible for the evaluation and improvement of the quality of care are protected under Section 1157 of the Evidence Code; and, accordingly, CDCR/CCHCS shall maintain the confidentiality of all Contractor peer review information to which it may gain access under this Agreement. The CDCR/CCHCS shall not disclose any information obtained from Contractor hereunder except as expressly approved by Contractor or as required by law.
7. Contractor shall furnish, upon request by CDCR/CCHCS, any CDCR/CCHCS Patient and/or DJJ Youth records maintained by Contractor or its medical and/or professional staff or any authorized officer, agent or employee, including, but not limited to, x-rays, lab results, and any medical committee reviews and recommendations related to a CDCR/CCHCS Patient and/or DJJ Youth.
8. Findings shall be submitted to Contractor, and CDCR/CCHCS will establish a review date at which time expectations and time frames for correcting any deficiencies will be established. Failure by Contractor to correct deficiencies, within agreed upon time frames, shall be reason for termination in accordance with Section 2, Termination of Agreement for Cause provision in this Exhibit.
9. **Utilization Management (UM)**
10. CDCR/CCHCS reserves the right to inspect, monitor, and perform utilization reviews prospectively, concurrently, or retrospectively, regarding the courses of medical treatment or hospitalization provided to CDCR/CCHCS Patients and/or DJJ Youth when performed by Contractor and/or Providers. CDCR/CCHCS may delegate this right to another State Agency or party. Such reviews shall be undertaken to determine whether the course of treatment or services had prior authorization, were medically necessary and performed in accordance with CCHCS Medical Standards of Care. CCHCS Medical Standards of Care means InterQual® Care Planning Criteria, published by McKesson Health Solutions, LLC, except to the extent they conflict with the Inmate Medical Services Policies and Procedures (IMSP&P), except to the extent the InterQual® criteria or the IMSP&Ps conflict with Articles 8 and 9, of Subchapter 4, of Chapter 1, of Division 3, of Title 15 of the California Code of Regulations. Requests for InterQual® criteria should be directed to um@cdcr.ca.gov and the IMSP&Ps are available at <http://www.cphcs.ca.gov/imspp.aspx>.
11. Contractor agrees to make available to CDCR/CCHCS for purposes of utilization review, an individual CDCR/CCHCS Patient and/or DJJ Youth’s medical record upon request from a CDCR/CCHCS UM physician or UM nurse. Contractor agrees that Contractor’s discharge protocols may not be applicable to all CDCR/CCHCS cases and that discharge determinations shall be with the concurrence of the CDCR/CCHCS attending physician.
12. Contractor acknowledges and agrees to inform its Providers that UM decisions shall not be deemed a substitute for the independent judgment of the treating physician or preclude treatment but shall be cause for denial of compensation for such treatment or hospitalization found to be inappropriate, whether identified through prospective, concurrent, or retrospective utilization review.
13. Contractor acknowledges and agrees that concurrent utilization management review shall not operate to prevent or delay the delivery of emergency medical treatment.
14. **Utilization Management Appeals**

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

1. **Informal Appeal**

Contractor shall informally appeal a UM decision to the Utilization Management Physician Advisor at the address below:

Attention: Deputy Medical Executive

Utilization Management

California Correctional Health Care Services

P.O. Box 588500

Elk Grove, CA 95758

The Utilization Management Physician Advisor will evaluate the appeal and respond within thirty (30) calendar days of the appeal.

1. **First Level Formal Appeal**

If Contractor disagrees with the UM Physician Advisor’s decision after an informal appeal, a first level formal appeal shall be submitted to the Utilization Management Chief Medical Officer (UM CMO). Contractor must appeal in writing to the address below, within sixty (60) calendar days of receipt of the Utilization Management Physician Advisor’s notice to uphold the denial or deferral of service:

Attention: Deputy Medical Executive

Utilization Management

California Correctional Health Care Services

P.O. Box 588500

Elk Grove, CA 95758

The UM CMO will evaluate the appeal and respond within sixty (60) calendar days.

1. **Second Level Formal Appeal**

Contractor may request a second level formal appeal if dissatisfied with the result of the first level formal appeal. Contractor shall submit second level appeals within sixty (60) calendar days, in writing, to CCHCS’s Health Care Review Subcommittee at the address below:

Attention: Deputy Medical Executive

Utilization Management

California Correctional Health Care Services

P.O. Box 588500

Elk Grove, CA 95758

The Health Care Review Subcommittee will evaluate the appeal and respond within sixty (60) calendar days.

1. **Changes to Contact Names and Addresses**

CDCR/CCHCS may change the name or address of any person or entity noted in this Provision by providing notice in the manner provided in this Agreement, and any such change shall not require a written amendment to this Agreement.

1. **Unusual Circumstances**
2. **Major Disaster or Epidemic**

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

1. **Circumstances Beyond Contractor’s Control**

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

1. **Indemnification** (Supersedes provision number 5, Indemnification, of Exhibit C)
2. **Terms of Contract**

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

1. **Provision of Services**

Contractor shall be solely responsible for any and all losses, liabilities, settlements, claims, demands, damages, or deficiencies (including interest) and expenses of any kind (including but not limited to, attorney’s fees) arising out of Contractor’s Provider’s, or their representatives’ negligent acts or omissions hereunder. The State, CDCR/CCHCS and CDCR/CCHCS’s officers, agents, and employees shall be responsible for their own acts and omissions.

1. **Overpayments and Offsets**

Contractor and CDCR/CCHCS agree that CDCR/CCHCS may offset any overpayment, erroneous payment, or otherwise improper payment (collectively, Overpayment) to Contractor by directly withholding that amount from the next payment or several payments as necessary to pay the Overpayment, that would otherwise be due to the Contractor. However, at least thirty (30) calendar days prior to seeking recovery via offset, CDCR/CCHCS shall provide written notice to the Contractor, to explain the nature of the Overpayment and to describe the recovery process. CDCR/CCHCS will not offset an Overpayment during the pendency of an appeal, filed under the Dispute Resolution process set forth in Provision 1, challenging the determination of Overpayment. If recovery of the full amount of Overpayment at one time imposes a financial hardship on Contractor, CDCR/CCHCS, at its sole discretion, may grant Contractor’s request to repay the recoverable amount in monthly installments over a period of consecutive months, not to exceed six (6) months.

1. **Liquidated Damages (Delete this provision if it is not applicable)**

This Provision is applicable only if another provision of this Agreement establishes the basis for imposing liquidated damages and the amount of liquidated damages.

1. **General**

It is the policy of the California Legislature to use liquidated damage provisions in State contracts, as set forth in Civil Code Section 1671, subdivision (b), and Public Contract Code (PCC) Section 10226. The parties agree that CDCR/CCHCS shall have the authority to impose liquidated damages on Contractor.

Therefore, it is agreed by CDCR/CCHCS and Contractor that, if the Contractor does not comply with the terms of this Agreement, as well as all applicable federal, state, and local statutes and regulations:

1. Damage and harm to the State will result;
2. Proving such damages shall be costly, difficult, and time-consuming;
3. If CDCR/CCHCS chooses to impose liquidated damages, Contractor shall pay the State those damages for not providing or performing the specified requirements;
4. Additional damages may occur in specified areas by prolonged periods in which Contractor does not provide or perform requirements;
5. The damage figures listed elsewhere in this Agreement represent a good faith effort to quantify the range of harm that could reasonably be anticipated at the time of the making of the Agreement;
6. The damages provided for under this Provision and elsewhere in this Agreement are difficult to establish;
7. The Contractor shall pay the amounts set forth in this Provision and elsewhere in this Agreement as liquidated damages and not as a penalty;
8. Liquidated damages will not be assessed if the Contractor’s delay or failure to timely perform its obligations was caused by factors beyond the reasonable control and without any material error or negligence of the Contractor, its employees, or Providers; and
9. If a Contractor delay or failure to timely perform an obligation under the Agreement was caused, in part, by a CDCR/CCHCS failure to perform an obligation under the Agreement, liquidated damages will be apportioned in an amount proportionate with the Contractor’s culpability, as determined by CDCR/CCHCS, for the delay or failure to timely perform.
10. **Manner of Collection**
11. After CDCR/CCHCS has determined that liquidated damages are to be assessed, CDCR/CCHCS shall notify the Contractor in writing of the reason for and amount of the assessment(s). The assessment notice shall be sent to the Contractor by certified mail, return receipt requested, or by any other method, which provides evidence of receipt. At CDCR/CCHCS’s discretion, the assessment notice may direct payment of the assessment by the Contractor. If payment is thus directed, the Contractor shall pay the assessment within thirty (30) calendar days of receipt of the assessment notice.
12. Any liquidated damages assessment may also be collected, at CDCR’s/CCHCS’s discretion, by offsetting the funds from payment(s) due the Contractor after the date of assessment, in the manner set forth in Provision 54.
13. **Interest on Pending Liquidated Damages**
14. If it should later be determined in the disputes process that funds collected by the State to pay liquidated damages assessment should be refunded, the State shall pay interest accruing from the date of offset or collection. The interest rate paid shall be the average rate for investment in the Pooled Money Investment Fund (PMIF) in effect for the month in which the assessment was offset or otherwise collected. When a liquidated damages assessment is offset or otherwise collected over a period of two (2) or more months, the interest rate paid by the State shall be the average rate for investment in the PMIF in effect for the first (1st) month in which the assessment was offset or otherwise collected, revised quarterly for the period of time the assessment was retained by the State.
15. The Contractor shall pay interest to the State on all liquidated damages assessments which are not either paid or offset against payment due the Contractor within thirty (30) calendar days of the date of receipt of the assessment notice. The interest rate paid shall be the average rate for investment in the PMIF in effect for the month of assessment. If the Contractor’s continuing liability for one (1) particular liquidated damages assessment extends over a period of two (2) or more months, the interest rate shall be the average for investment in the PMIF for the first (1st) month in which liquidated damages were assessed, revised quarterly over the period the assessment remained uncollected.
16. Interest accrues during all periods of time in which the liquidated damages assessment is unpaid or otherwise uncollected. For instance, interest accrues during periods in which collection of the assessment has been suspended, pending the outcome of the dispute or appeal.
17. If a reduction in the final amount of liquidated damages is finally determined, the interest shall be prorated unless impractical to do so.

Nothing in this provision shall be construed as relieving the Contractor from performing any other contract duty not listed herein, nor is CDCR/CCHCS’ right to enforce or seek other remedies for failure to perform any other contract duty hereby diminished.

If any portion of these liquidated damages provisions is determined to be unenforceable, the other portions shall remain in full force and effect.

1. **Nature of Relationship**

Contractor shall be deemed at all times to be an independent contractor and wholly responsible for the manner in which it performs the services and work requested by CDCR/CCHCS under this Agreement. Neither Contractor nor its Providers shall have employee status with CDCR/CCHCS, nor be entitled to participate in any plans or arrangements by CDCR/CCHCS pertaining to or in connection with any retirement, health, or other benefits that CDCR/CCHCS may offer its employees. Contractor is liable for the acts and omissions of itself and its Providers. Contractor shall be responsible for all obligations and payments; whether imposed by federal, state or local law, including, but not limited to the Federal Insurance Contributions Act (FICA), income tax withholding, workers’ compensation insurance, unemployment compensation, insurance and other similar responsibilities related to Contractor’s or Provider’s performance of services or work. Nothing in this Agreement shall be construed as creating an employment or agency relationship between CDCR/CCHCS and Contractor, Providers, or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from CDCR/CCHCS shall be construed as providing for direction as to policy and the result of Contractor’s or Provider’s work only, and not as to the means by which such a result is obtained. CDCR/CCHCS does not retain the right to control the means or the method by which Contractor or Provider performs work under this Agreement.

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

The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.