

SPECIAL TERMS AND CONDITIONS & ADDITIONAL PROVISIONS

1. General Nature of Agreement/Limitation as to Contractor's Providers/Contractor's Responsibility for Its Providers and All Claims by or on Behalf of Contractor's Providers

This Agreement is between only those expressly identified and signing as parties hereto, i.e., Contractor and CDCR/CCHCS. No person or entity not expressly named and signing as a party to this Agreement is intended to be a party and shall not be accepted or treated as a party. No employee of Contractor, or provider proposed or provided by Contractor under this Agreement, whether or not said providers are approved, accepted and used by CDCR/CCHCS, is thereby made a party to this Agreement or acquires any contractual rights of any type regarding CDCR/CCHCS.

Contractor is an independent contractor who is solely and fully responsible for the manner in which it and its providers perform/provide services under this Agreement. Any terms in this Agreement or arising related to this Agreement, and indicating or referring to work direction from CDCR/CCHCS, are intended and shall be construed as providing for direction only as to policy and work results, and not as to the method or means by which work results are obtained. CDCR/CCHCS does not retain the right to control the method or means by which Contractor or its providers perform work under this Agreement. Nothing in this Agreement is intended or shall be construed as creating an employment or agency relationship between CDCR/CCHCS and Contractor, or between CDCR/CCHCS and any providers associated with Contractor.

Contractor and any of its providers, as proposed or provided to CDCR/CCHCS by Contractor for purposes of this Agreement, and whether or not any of the same are allowed to provide services to CDCR/CCHCS, shall not thereby be considered civil service employees, or CDCR/CCHCS/State employees, of any type or for any purpose, including with respect to any wage schedule or benefit plan available to civil service employees generally or to employees of CDCR/CCHCS or the State of California.

This Agreement does not control or limit the nature of the relationship between Contractor and any providers associated with it. CDCR/CCHCS defers to Contractor as to the nature, details and type of relationship between Contractor and any providers associated with it, including any health care service provider, whether or not proposed by Contractor and approved/accepted by CDCR/CCHCS pursuant to this Agreement. This Agreement does not control or limit whether a relationship between Contractor and any of its providers is intended to be, or should be considered to be as an employee, subcontractor, independent contractor, agent, partner, health care service provider, or any other possibility. Whatever that relationship may be, it is not one by which the providers can either acquire any rights of the Contractor in relation to CDCR/CCHCS, or otherwise acquire any rights on their own in relation to CDCR/CCHCS.

Whatever the relationship between Contractor and its providers, Contractor agrees that any subcontract used by it to provide services to CDCR/CCHCS will include provision(s) requiring compliance with the applicable terms and conditions specified in this Agreement. Any related actions or claims initiated or filed by, or on behalf of, the Contractor or its providers, such as, but not limited to any action or claim for or related to unemployment benefits, tax withholdings, lost wages or revenues, workers' compensation, injuries or illness, are entirely the responsibility of the Contractor. To any extent that such an action or claim, by or on behalf of, or otherwise with respect to any providers associated with Contractor, results in any monetary assessment, either as awarded or per agreement, and however characterized, including, but not limited to wages, compensation or financial damages of any type, any withholding amount, or fine or other administrative assessment or settlement of any type, and whether or not involving any local, state or federal law or local, state or federal government entity, Contractor agrees to pay all such costs that are assessed, awarded, agreed or incurred in any manner, including that Contractor will have primary responsibility for paying

such costs, and also agrees to promptly reimburse CDCR/CCHCS or the State for any such costs paid by any of those entities.

Whatever the relationship between Contractor and its providers, any compensation or other amounts possibly due from Contractor to its providers, arising from or related to services rendered to CDCR/CCHCS pursuant to this Agreement, and any duty to withhold appropriate taxes, shall be the sole responsibility of Contractor. Contractor's obligation to pay its providers under this Agreement is independent from any amount due to Contractor under this Agreement. Accordingly, CDCR/CCHCS and/or the State has no obligation to make any payments directly to Contractor's providers that Contractor may have provided, and has no obligation to ensure that Contractor makes any payments due from Contractor.

Any dispute, claim, grievance or any purported cause of action of any type (collectively: any dispute), initiated formally or informally, by or on behalf of, or in any way regarding any one or more of Contractor's former, current, or would-be providers, whether solely against Contractor or also against or involving CDCR/CCHCS or the State in any way, and related to this Agreement in any way, shall be the sole responsibility of Contractor to handle and resolve, without involving CDCR/CCHCS or the State. This includes, but is not limited to any dispute about wages, work schedules, work conditions, travel or training, workers' compensation, unemployment insurance, or any expense, injuries or benefits of any kind. No employee or provider of Contractor proposed or provided by Contractor shall have any rights or remedies against CDCR/CCHCS or the State related to or arising from this Agreement. No such employee or provider associated with Contractor is eligible to use the dispute resolution process provided in this Agreement, for any dispute against anyone, as that process is limited to claim/disputes by Contractor against CDCR/CCHCS.

Any effort to state, file or press any action or claim against CDCR/CCHCS or the State, by or on behalf of such providers associated with Contractor, shall be the sole responsibility of Contractor. Consistent with the overall indemnification clause, Contractor agrees to indemnify, defend, and hold harmless the State, CDCR/CCHCS, and CDCR/CCHCS' 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 from or related to this Agreement, initiated by or on behalf of anyone, including Contractor and its providers, and any person or entity associated with Contractor acting pursuant to this Agreement. Regarding defense of any such action or claim, CDCR/CCHCS shall have the option of choosing its defense counsel, with all costs incurred in the course of such defense to be paid by Contractor, including any negotiated or court ordered award/fine/settlement. CDCR/CCHCS will promptly notify Contractor of any action or claim by or on behalf of any of Contractor's providers.

2. Dispute Resolution Process (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 processes, 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 process. This process is only available for disputes and/or claims by Contractor against CDCR/CCHCS, and is not available for any disputes or claims by or on behalf of its providers.

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), or 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 diligently 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.

a. Contract Disputes

(1) 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 the CCHCS Direct Care Contracts Section shall be used as a resource in resolving potential contract disputes. Contractor shall contact the Direct Care Contracts Section Help Desk at: (916) 691-0698 with any questions or clarifications regarding contracts or dispute process. The outcome of the Verbal Inquiry shall be documented in writing (i.e., via email, fax, or letter) by the program, institution contract liaison or designee, or CCHCS Direct Care Contracts Section and sent to all affected parties.

(2) Informal Appeal

If the dispute or claim is not resolved to the Contractor's satisfaction at the Verbal Inquiry level, Contractor may file a written Informal Appeal to the CCHCS Direct Care Contracts Section Health Program Manager III, within thirty (30) calendar days following the date of the determination 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 Direct Care Contracts Section Health Program Manager III or designee at the following address:

Informal Appeal
Health Program Manager III
Direct Care Contracts Section
California Correctional Health Care Services
P. O. Box 588500, Building D-2
Elk Grove, CA 95758

The CCHCS Direct Care Contracts Section Manager or designee shall issue a written decision in response to Contractor's Informal Appeal within fifteen (15) calendar days of receipt of the Informal Appeal. The written decision shall either:

- (a) Document the dispute settlement and what, if any, conditions were reached; or
- (b) 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.

(3) Formal Appeal – Administrative Resolution

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

Formal Appeal
Deputy Director
Business Services
California Correctional Health Care Services
P. O. Box 588500, Building D-3
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 (CCP) Section 2015.5 that the dispute, claim, or demand is made in good faith, and that the supporting data is 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 CCHCS is responsible.

The CCHCS Business Services Deputy Director or designee shall make a determination on the issue and respond in writing within thirty (30) calendar days of receipt of the Formal Appeal, indicating the written decision. Contractor shall be notified if an extension of time is necessary.

(4) 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 upon 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.

b. Billing Disputes

(1) Final Payment

The acceptance by Contractor of final payment shall release 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 the process of resolution. However, CDCR/CCHCS' issuance of payments generally, or of the final payment specifically, shall not waive CDCR/CCHCS' right to seek recovery of overpayments in the manner set forth in this Agreement.

(2) Informal/Verbal Claim Payment Inquiry

Contractor shall contact the CCHCS Healthcare Invoicing Section (HIS) Help Desk at (916) 691-0699 with any questions or clarifications regarding the health care invoice/claim submittal or dispute process. The parties shall make a first attempt in good faith to resolve the dispute or question by informal/verbal discussion(s). The parties agree that HIS should be used as a resource in resolving potential patient/youth health care invoice/claim disputes. If the dispute or claim is not resolved at the Informal/Verbal Claim Payment Inquiry level as referenced in Exhibit B – Budget Detail and Payment Provisions of the Agreement, Contractor may proceed with the Formal Claims Appeals process outlined below.

(3) Formal Claims Appeal

For disagreements regarding claim payments, or claim denials by HIS for a claim billed under the Agreement, Contractor may file a Formal Claims Appeal letter within thirty (30) calendar days following the determination from the Informal/Verbal Claim Payment Inquiry level, with the Healthcare Invoicing Section Appeals Team at the following address:

Appeals Team
Healthcare Invoicing Section
California Correctional Health Care Services
P.O. Box 588500, Building D-2
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) 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 Section 63, Overpayments and Offsets of this exhibit.

(4) First Level Appeal

If the dispute or claim is still not resolved to Contractor's satisfaction at the Formal Claims Appeal level, Contractor may file a written First Level Appeal, within thirty (30) calendar days following the determination from the Formal Claims Appeal level, with the Healthcare Invoicing Section Associate Director at the following address:

First Level Appeal
Associate Director
Healthcare Invoicing Section
California Correctional Health Care Services
P. O. Box 588500, Building D-2
Elk Grove, CA 95758

The Healthcare Invoicing Section Associate Director or designee shall issue a written decision in response to Contractor's First Level Appeal within fifteen (15) calendar days of receipt of the First Level Appeal. The written decision shall either:

- (a) Document the dispute settlement and what, if any, conditions were reached; or
- (b) 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.

(5) Second Level Appeal – Administrative Resolution

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

Second Level Appeal
Director
Health Care Policy and Administration
California Correctional Health Care Services
P. O. Box 588500, Building D-3
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 CCP § 2015.5 that the dispute, claim, or demand is made in good faith, and that the supporting data is 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 CCHCS is responsible.

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

c. Utilization Management Reviews

- (1) 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 its 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 and were medically necessary. The utilization and performance of direct health care services to CDCR/CCHCS patients and/or DJJ youth is expected to be in accordance with applicable state law for patient health care, as well as any CCHCS practice guidelines, including the Inmate Medical Services Policies and Procedures (IMSP&P), California Code of Regulations (CCR), Title 15, Division 3, Chapter 1, Subchapter 4, Articles 8 and 9, and be in accordance with the applicable standard of care. CCHCS also relies on InterQual® Care Planning Criteria, published by McKesson Health Solutions, LLC, to the extent, not inconsistent with the previously cited requirements, guidelines and standards. Requests for InterQual® criteria should be directed to CCHCS Utilization Management (UM) at: um@cdcr.ca.gov. IMSP&Ps are available at the following link: <http://www.cphcs.ca.gov/imspp.aspx>.
- (2) Contractor agrees to make available to CDCR/CCHCS for purposes of utilization review, an individual CDCR/CCHCS patient's 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.
- (3) 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.
- (4) Contractor acknowledges and agrees that concurrent utilization management review shall not operate to prevent or delay the delivery of emergency medical treatment.

d. Utilization Management Appeals

If the Contractor disagrees with the UM review of a claim 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 the action within the time limits contained in the appeal process. However, with the mutual consent of the parties, the time limitation for any step may be extended. If there has not been a 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/Verbal UM Claims Payment Inquiry

Contractor shall contact the Healthcare Invoicing Section Help Desk at (916) 691-0699 with any questions or clarifications regarding UM invoice/claim submittal or dispute process. The parties shall make a first attempt in good faith to resolve the dispute or question by informal

discussion(s). The parties agree that HIS should be used as a resource in resolving potential patient/youth UM invoice/claim disputes. If the dispute or claim is not resolved at the Informal/Verbal UM Claims Payment Inquiry level, Contractor may proceed with the Formal UM Claims Appeal process outlined below.

(2) Formal UM Claims Appeal

If the dispute or claim is still not resolved to Contractor's satisfaction at the Informal/Verbal UM Claims Payment Inquiry level, Contractor may file a written Formal UM Claims Appeal, within thirty (30) calendar days following the date of the determination from the Informal/Verbal UM Claims Payment Inquiry level, with the Healthcare Invoicing Section UM Appeals Team at the following address:

UM Appeals Team
Healthcare Invoicing Section
California Correctional Health Care Services
P.O. Box 588500, Building D-2
Elk Grove, CA 95758

The Healthcare Invoicing Section UM Appeals Team will evaluate the appeal and issue a written response within thirty (30) calendar days of receipt of the Formal UM Appeal.

(3) First Level UM Appeal

If the dispute or claim is still not resolved to Contractor's satisfaction at the Formal UM Claims Appeal level, Contractor may file a written First Level UM Appeal, within thirty (30) calendar days following the date of the determination from the Formal UM Claims Appeal level, with the Healthcare Invoicing Section Associate Director at the following address:

First Level UM Appeal
Associate Director
Healthcare Invoicing Section
California Correctional Health Care Services
P. O. Box 588500, Building D-2
Elk Grove, CA 95758

The Healthcare Invoicing Section Associate Director or designee shall issue a written decision in response to Contractor's First Level UM Appeal within fifteen (15) calendar days of receipt of the First Level UM Appeal. The written decision shall either:

- (a) Document the dispute settlement and what, if any, conditions were reached; or
- (b) Document the reason(s) the dispute could not be resolved and provide notification to Contractor of its option to file a Second Level UM Appeal within thirty (30) calendar days of the date of the written decision.

(4) Second Level UM Appeal

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

Second Level UM Appeal
Director
Health Care Policy and Administration
California Correctional Health Care Services
P. O. Box 588500, Building D-3
Elk Grove, CA 95758

This Second Level UM 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 CCP § 2015.5 that the dispute, claim, or demand is made in good faith, and that the supporting data is 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 CCHCS is responsible.

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

e. Further Resolution

If the dispute is not resolved to Contractor's satisfaction, or Contractor has not received a written decision from CCHCS within thirty (30) state business days, or other mutually agreed upon 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.

f. Limitation of Scope of Process

The dispute process set forth in Section 2, Dispute Resolution Process provision is not applicable for contracts that have been terminated in accordance with the Section 3, Right to Terminate provision of this exhibit.

g. Changes to Contact Names and Addresses

CDCR/CCHCS may change the name or address of any person or entity noted in Section 2, Dispute Resolution Process provision by providing notice in the manner provided in this Agreement, and any such change shall not require a written amendment to this Agreement.

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

a. Termination of Agreement without Cause

CDCR/CCHCS may terminate this Agreement without cause by giving no 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.

b. Termination of Agreement for Cause

Immediate Termination

CDCR/CCHCS may immediately terminate this Agreement under any circumstances that CDCR/CCHCS determines in good faith to be a breach by Contractor of its obligations under the Agreement, including its duty to maintain organizational and financial resources in a manner reasonably likely to facilitate Contractor's current and on-going compliance with the terms of the Agreement. Examples of breaches that justify termination of the Agreement include, but are not limited to the following:

- (1) If CDCR/CCHCS determines, 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.
- (2) If CDCR/CCHCS determines, that the Contractor is failing to maintain sufficient resources to perform under the Agreement successfully. This includes, but is not limited to, having providers in sufficient numbers and with the skills required who are willing to provide services under the Agreement.
- (3) If CDCR/CCHCS determines, based on reliable and factual information, that the Contractor's actions place CDCR/CCHCS at risk for claims against CDCR/CCHCS.
- (4) If CDCR/CCHCS determines there is a substantial probability that Contractor is unable to render health care services to CDCR/CCHCS patients and/or Division of Juvenile Justice (DJJ) youth.
- (5) If CDCR/CCHCS determines 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 its providers.
- (6) If CDCR/CCHCS determines that the institution/facility is experiencing difficulty in securing treatment from Contractor.
- (7) If CDCR/CCHCS determines that Contractor has failed to meet the terms, conditions and/or responsibilities of the Agreement.
- (8) If CDCR/CCHCS determines that the services rendered were below the applicable standards of care.

c. 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.

d. 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 providers, 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 notified and will be permitted five (5) State business days to submit the information requested. Failure to provide the requested information may be grounds for termination of the Agreement for cause.

e. 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 the 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.
- (2) Deliver to CDCR/CCHCS all property and documents of CDCR/CCHCS that are in the custody of Contractor and its 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 (1), (2), and (3) above, and any other relevant information requested by CDCR/CCHCS.

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 payments due to Contractor hereunder and the balance, if any, shall be paid to Contractor.

f. Alternative Arrangements Upon Termination

Upon termination 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.

g. Assurances Upon Termination

Upon the termination of this Agreement for any reason whatsoever, Contractor shall cooperate fully with CDCR/CCHCS in order to effectively and orderly transition 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.

h. 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 in 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.

4. Remedies Other Than Termination

Notwithstanding other provisions of this Agreement, and in 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 3, Right to Terminate provision of this exhibit, when CDCR/CCHCS deems these remedies more appropriate:

- a. Withhold payment for specified services.
- b. Suspend a Contractor from providing services for a specified period of time.

CDCR/CCHCS reserves the State's right to execute the remedies under provisions 4a. and 4b. above, if the failure constitutes a material breach of this Agreement and if Contractor does not cure such failure within the timeframe stated in the State's corrective action plan, which in no event shall be less than fifteen (15) calendar days, unless the Exhibit A – Scope of Work, in CDCR/CCHCS' sole discretion, necessitates a shorter period.

5. Stop Work

- a. 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 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.
- b. 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' discretion and upon receipt of written confirmation.
 - (1) 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.
 - (2) In 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:
 - (a) Cancel, extend, or modify the suspension or stop work notification; or
 - (b) Terminate the Agreement as provided in Section 3, Right to Terminate provision of this exhibit.
- c. 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.
- d. 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.
- e. If a notice to suspend performance or to stop work is issued and not cancelled, and after such issuance, this Agreement is terminated pursuant to Section 3, Right to Terminate provision of this exhibit, CDCR/CCHCS shall allow reasonable costs resulting from the suspension or stop work notification in arriving at the settlement costs.
- f. 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. For any service by Contractor or its providers provided under this Agreement prior to the effective date of a notice to suspend or stop work, CDCR/CCHCS shall review those services to confirm they meet the terms of the Agreement and shall in good faith make a determination whether payment is warranted.

6. 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.

- a. In CDCR/CCHCS' 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.

(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.

b. The notice of responsibility hearing shall include the following:

(1) Date of the hearing.

(2) Time of the hearing.

(3) Location of the hearing.

(4) Designated hearing staff.

(5) Contact name and telephone number.

(6) Reason for the hearing.

(7) Scope of action being considered.

(8) Hearing procedure outline shall include, but not be limited to, submittal of rebuttal by bidder, supporting documents, notice of final decision by CDCR/CCHCS, and appeal process.

7. Approval

This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services (DGS), if required. Contractor may not commence performance until such approval has been obtained.

8. 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.

9. Liability for Non-Conforming 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 non-conformity. Contractor shall be responsible for reimbursing CDCR/CCHCS for any additional expenses incurred to cure such defects.

10. Liability for Loss and Damages

Any damages caused by Contractor or its provider to the State's institutions/facilities 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.

11. Temporary Non-Performance

If for any reason Contractor is temporarily unable to perform/provide the services as required, CDCR/CCHCS, during the period of Contractor's actual or reasonably anticipated inability to perform, has and can use its right to obtain replacement or supplemental services of the same type, by any reasonable and/or necessary means. Upon notice by CDCR/CCHCS to Contractor of the details and costs incurred in obtaining any such replacement or supplemental services, Contractor shall promptly reimburse CDCR/CCHCS for such costs. CDCR/CCHCS has the alternative option of recovering

such costs by withholding the same from any amounts still due from CDCR/CCHCS to Contractor under the Agreement. For purposes of this section, "temporarily unable" means an inability of Contractor to provide the contracted services, lasting for at least one (1) calendar day. If Contractor is unable to perform for five (5) calendar days or more, consecutively or cumulatively, CDCR/CCHCS may consider the non-performance to be a breach of contract and take any appropriate action, which could include termination of the Agreement for failure to perform.

12. 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. Emergency contracts are subject to evaluation and negotiation and an extension of terms does not apply.

13. 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 (2) or more funding sources for the same services performed even though both funding sources could benefit.

14. Subcontractor/Provider

Contractor is required to identify, on the Subcontractor/Consultant List form (CCHCS-MC-391) or its successors provided by CDCR/CCHCS, all subcontractors or service providers who will, on behalf of or as arranged by or through Contractor, 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/provider information.

15. Contractors/Providers/Employees of Contractor/Independent Contractors/Subcontractors 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 its 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 an institution/facility shall adhere to the same requirements for CDCR/CCHCS employees as set forth in the CCR, Title 15, Division 3, Chapter 1, Subchapter 5, Article 2.

16. Independent Contractor

Contractors, Subcontractors, 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.

17. Expatriate Corporations

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

18. Provider (CDCR/CCHCS Approval/Disapproval of Contractor's Provider)

Contractor has the sole responsibility to find and provide the providers it needs to meet its obligations under this Agreement.

- a. It is hereby agreed that CDCR/CCHCS has the following rights to be exercised in CDCR/CCHCS' sole discretion:
 - (1) The right to approve or disapprove the initial or continuing use of any provider proposed to CDCR/CCHCS by Contractor in advance of such provider being used to render services to CDCR/CCHCS under the Agreement; it is agreed that no such provider shall render services without advance approval by CDCR/CCHCS.
 - (2) The right to disapprove the initial or continuing use of Contractor's provider due to them violating the terms of this Agreement.
 - (3) The right to disapprove the initial or continuing use of Contractor's provider when they violate CDCR/CCHCS custody and/or safety requirements and rules, along with having criminal convictions, actions pending, and/or in-process.
 - (4) The right to disapprove the initial or continuing use of a Contractor's provider who has been terminated from or in the process of being terminated from a state, county, or local agency due to disciplinary reasons as an employee.
 - (5) The right to disapprove the initial or continuing use of Contractor's provider due to them having been released from providing contracted services with another state, county, or local agency for violating the terms of the contracts, licensure suspensions, pending licensure actions, fraudulent medical billing, poor patient outcomes documented, and/or failure to perform services as needed.
 - (6) The right to disapprove the initial or continuing use of Contractor's provider due to them being a retired annuitant from a state, county or local agency receiving benefits under the California Public Employee Retirement System. Contractor is responsible to verify the hours worked during the year they are being considered to perform services under the Agreement. This includes all previous work with any other state, county or local agency during the year. If the review indicates they have worked in excess of 960 hours in that year, they are not to be submitted to CDCR/CCHCS. Contractors shall at the time of submittal, provide the current hours already worked and make notification to CDCR/CCHCS that the provider is a retired annuitant. It is the Contractor's responsibility to monitor the hours worked to ensure they do not exceed 960 hours in a fiscal period (July 1 to June 30).
 - (7) The right to request a specific provider for a specific service or patient need. Such a request is not binding on Contractor, and Contractor's inability to accommodate such a request will not be considered a breach of the Agreement.
 - (8) The right to require Contractor to provide a substitute provider for one either unavailable or disapproved.
 - (9) The right to approve Contractor's substitution of provider, whether substitution was initiated by CDCR/CCHCS or Contractor, prior to the substitute provider commencing work.

(10) Based on the reason for disapproval of Contractor's provider, CDCR/CCHCS reserves the right to request the removal be made on a temporary and/or permanent basis and for an individual institution/facility and/or statewide institution/facility basis. The determination for length of time and location(s) will be provided to the Contractor by the CCHCS Direct Care Contracts Section.

- b. The right of CDCR/CCHCS to approve or disapprove initial or continuing use of Contractor's provider can be exercised by the Chief Executive Officer, Chief Medical Executive, Chief Medical Officer, Headquarters Direct Care Contracting staff, or designee. Reason can be submitted verbally and/or in writing. Contractor shall track reasons for disapprovals to ensure they are monitoring and updating their processes for submitting providers, to reduce disapprovals from occurring.

If any approved provider of the Contractor is unable to perform, even if due to factors beyond Contractor's control, Contractor shall timely offer substitute provider(s) to CDCR/CCHCS.

- c. Contractor shall immediately report in writing to CDCR/CCHCS the resignation, dismissal, or other unavailability of any providers whose unavailability has the potential to impede Contractor's full and timely compliance with the Agreement. Contractor's report shall include a description of the manner in which it has filled those positions or intends to fill them in a manner that minimizes the risk of Contractor's non-compliance with the Agreement. CDCR/CCHCS may immediately terminate the Agreement if, in its sole discretion, it concludes that Contractor's staffing plan or actions renders it unable to satisfactorily meet its obligations under the Agreement.
- d. Contractor must notify CDCR/CCHCS immediately of any changes to its providers performing services under the contract to reduce and eliminate any untimely service interruptions or CDCR/CCHCS patient and/or youth care disruption. In addition, upon a provider's departure or release, Contractor must recover and return any State-issued identification provided to Contractor's providers to the institution/facility where services were last performed or mailed to the CCHCS Direct Care Contracts Section, Health Care Provider Relations Team at the following address:

Health Care Provider Relations Team
Direct Care Contracts Section
California Correctional Health Care Services
P. O. Box 588500, Building D-2
Elk Grove, CA 95758

19. Restricted Employment Areas

- a. Ex-offenders shall not be hired or assigned work in areas which provide access to:
- (1) Any records pertaining to free staff.
 - (2) Sensitive personal or medical information on CDCR/CCHCS patients and/or DJJ youth.
- b. These areas include, but are not limited to, the following:
- (1) Medical
 - (2) Personnel
 - (3) Records
 - (4) Accounting
 - (5) Data processing

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

20. Electronic Waste Recycling

Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Public Resources Code, Division 30, Part 3, Chapter 8.5, Article 1, Section 42460, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that substantiate 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 Revision 1 and National Industrial Security Program Operating Manual (DoD 5220.22-M) and Clearing and Sanitization Matrix based on The National Security Agency Central Security Service NSA/CSS Policy Manual 9-12, "Storage Device Sanitization Manual."

21. 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/or permit(s) required by law for Contractor and provider to render 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/or its providers fail to remain in compliance with all required license(s) and/or 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.

22. Non-Discrimination Clause

- a. During the performance of this Agreement, Contractor and its subcontractors or other providers, shall not unlawfully discriminate, harass, or allow harassment against any existing provider or applicant for employment or work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall ensure that the evaluation and treatment of all such providers and applicants are free from such discrimination and harassment. Contractor shall ensure that all persons or entities involved in providing services via Contractor and this Agreement, shall comply with the provisions of the Fair Employment and Housing Act, Government Code (GC) Section 12990 (a-f) and the applicable regulations promulgated thereunder (CCR, Title 2, § 11000 et seq.). Contractor shall certify compliance with the Unruh Civil Rights Act (California Civil Code Section 51) and the Fair Employment and Housing Act (GC § 12960). The applicable regulations of the Fair Employment and Housing Council implementing GC § 12990 (a-f), set forth in CCR, Title 2, Division 4.1, Subchapter 5, is incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor shall ensure that it and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- b. Contractor shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

23. Child Support Compliance

For any Agreement in excess of One Hundred Thousand Dollars (\$100,000), the Contractor acknowledges in accordance with PCC § 7110, that:

- a. The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement,

including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code, Division 9, Part 5, Chapter 8 (commencing with Section 5200);

- b. The Contractor shall fully comply with all requirements for honoring any earnings assignment order against its providers and/or for providing the names of its providers to the New Hire Registry maintained by the California Employment Development Department.

24. Certification Clauses

The Contractor Certification Clauses contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

25. 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.

26. Permits and Certifications from State Board of Equalization

This Agreement shall be subject to all requirements as set forth in Revenue and Taxation Code Sections 6452.1, 6487, 6487.3, 7101, and 18510, and PCC § 10295.1 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 Agreement, 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.

27. Unenforceable Provisions

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the parties agree that all other provisions of this Agreement remain in full force and effect.

28. Priority Hiring Considerations

If this contract includes services in excess of Two Hundred Thousand Dollars (\$200,000), the Contractor shall give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Welfare and Institutions Code (WIC) Section 11200 in accordance with PCC § 10353.

29. Conflict of Interest

Contractor and its providers shall abide by the provisions of GC §§ 1090, 81000 et seq., 82000 et seq., 87100 et seq., and 87300 et seq., PCC §§ 10335 et seq., and 10410 et seq., CCR, Title 2, §§ 18700 et seq., and Title 15, § 3409, and the CDCR Department Operations Manual (DOM) Section 31100 et seq. regarding conflicts of interest.

a. Contractors and Contractor's Providers Acting in a Consultant Capacity

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. Generally, service contractors (other than consultant contractors required to file as above) and their providers shall be required to file a FPPC Form 700 if so requested by CDCR/CCHCS, whenever it appears that a conflict of interest may be an issue, or 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; or
- (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' Conflict of Interest Code.

b. Current State Employees

- (1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- (2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
- (3) In addition to the above, officers and employees shall also avoid actions resulting in or creating an appearance of:
 - (a) Using an official position for private gain.
 - (b) Giving preferential treatment to any particular person.
 - (c) Losing independence or impartiality.
 - (d) Making a decision outside of official channels.
 - (e) Affecting adversely the confidence of the public or local officials in the integrity of the program.
- (4) 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.

c. Former State Employees

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

- (3) Contractor shall avoid any conflict of interest whatsoever with respect to any financial dealings, employment services, or opportunities offered to CDCR inmates/parolees. Contractor shall not employ or offer to employ CDCR inmates/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/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 fully or partially owned (more than five percent (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 fully 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.

If Contractor violates any provision of the above paragraphs, CDCR/CCHCS in its sole discretion, may immediately terminate this Agreement.

30. Contractor's Obligation to Inform

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.

31. Disclosure

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

32. Security Clearance/Fingerprinting/Live Scan

The State reserves the right to conduct fingerprinting and security clearances 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 its provider access to State premises, which includes any CDCR institution/facility. Contractor is responsible for ensuring that Contractor and its providers have completed and submitted all required documents necessary to complete the gate clearance and Live Scan process, prior to commencing services under the Agreement. Contractor and its providers may be required to attend CDCR/CCHCS orientation or training after being gate cleared, but shall not render direct health care services to CDCR/CCHCS patients and/or DJJ youth under this Agreement until the CDCR Live Scan process is complete and

clearance is obtained. The State further reserves the right to terminate the Agreement, reject and/or restrict access of Contractor and its providers, if a threat to security is determined.

33. 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, Subchapter 11, Section 1621 et seq.

Provisions 34 through 40 apply to services provided on departmental and/or institution/facility grounds:

34. Compliance With Requirements of the Americans With Disabilities Act

Notwithstanding any other Act, statute, regulation or policy, affiliate agrees to conform to all practices, procedures, and policies with respect to any and all interactions with CDCR/CCHCS patients and/or DJJ youth 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*, *Armstrong v. Schwarzenegger*, and *Armstrong v. Brown* (Case C 94-2307 CW) on January 3, 2001 (filed February 7, 2001), and amended September 9, 2006, September 11, 2007, and December 29, 2014, and with the intent and purpose to avoid and eliminate discrimination against CDCR inmates, DJJ youth, 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 as 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 CDCR/CCHCS patients and/or DJJ youth who are receiving care under this Agreement.

35. Bloodborne Pathogens

Contractor and its providers shall adhere to the California Division of Occupational Safety and Health (Cal-OSHA) regulations and guidelines pertaining to bloodborne pathogens.

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

The CDCR 7336 form shall be completed thirty (30) calendar days, or less, prior to being submitted 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' TB contractor staff shall perform or read the TB tests.

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

Contractor assumes the obligation to ensure that all of its providers, staff, subcontractors or associated agents, including its health care service providers, who are expected to work in and around CDCR inmates or DJJ youth, are, prior to such work or contact with CDCR inmates or DJJ youth, apprised of the laws, rules and regulations governing conduct with CDCR inmates or DJJ youth. Individuals who are not employees of CDCR/CCHCS, but who are working in and around CDCR inmates and/or DJJ youth, who are incarcerated, are to apprise themselves of the laws, rules, and regulations governing conduct in associating with CDCR inmates or DJJ youth. Prior to initial entry onto institution/facility or camp grounds, Contractor will receive a summary of the pertinent rules and regulations regarding conduct when non-departmental employees come into contact with CDCR inmates or DJJ youth.

By signing this contract, Contractor agrees that if the provisions of the contract require Contractor or its providers to enter an institution/facility, Contractor and its provider shall be made aware of and shall abide by the following laws, rules and regulations governing conduct in associating with CDCR inmates or DJJ youth.

- a. 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 CDCR inmates or DJJ 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 Institutions Code (WIC) Section 1712.

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

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

- c. All persons entering onto institution/facility 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 or restrictions to visiting or facility access.

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

- d. Persons normally permitted to enter an institution/facility or camp may be barred, for cause, by the CDCR Secretary, Director of Division of Adult Institutions (DAI), Warden, Regional Parole Administrator and/or their designee.

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

- e. It is illegal for an individual who has been previously convicted of a felony offense to enter into CDCR institutions/facilities, or camps in the nighttime, 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 §§ 602, 4570.5, and 4571; CCR, Title 15, §§ 3173, 3283, and 3289; WIC § 1001.7.

- f. Encouraging and/or assisting CDCR inmates or DJJ youth to escape are a crime. It is illegal to bring firearms, deadly weapons, explosives, tear gas, drugs or drug paraphernalia on CDCR

institutions/facilities or camp premises. It is illegal to give CDCR inmates or DJJ youth firearms, explosives, alcoholic beverages, wireless communication devices or components 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 §§ 2772, 2790, 4535, 4550, 4573, 4573.5, 4573.6, 4574, 4576, and 5030.1; CCR, Title 15, §§ 3172.1, 3188, 3292, 4681, and 4710; WIC §§ 1001.5 and 1152.

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

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

- h. In an emergency situation, the visiting program and other inmate program activities may be suspended by the Warden or designee.

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

- i. For security reasons, volunteers, media, contractors, dignitaries, and guests must not wear clothing that in any way resembles State-issued inmate or DJJ youth clothing (blue denim shirts, blue denim pants).

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

- j. Interviews with SPECIFIC INMATES are not permitted. Conspiring with an inmate to circumvent policy and/or regulations constitutes a rule violation that may result in appropriate legal action. 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, §§ 3261.5 and 4700(a)(1).

- k. End of Life Option Act: Prohibited Activities

Regarding CDCR/CCHCS patients, all participation in activities under the End of Life Option Act, i.e., related to patients accessing aid-in-dying drugs, is prohibited. CDCR/CCHCS shall not participate in or allow its employees, independent contractors, or other persons or entities, including other health care providers, to participate in activities under the End of Life Option Act, on premises owned or under the management or under direct control of CDCR, or while acting within the course and scope of any employment by, or contract with, CDCR or CCHCS. Consistent with this policy, patients shall not be permitted access to aid-in-dying drugs under the End of Life Option Act. CCHCS shall continue to offer patients end of life care, including counseling, hospice and palliative care.

SOURCE: California Health and Safety Code, Division 1, Part 1.85, Section 443-443.22; CCHCS, Inmate Medical Services Policies and Procedures (IMSP&P), Volume 4, Chapter 21, Palliative Care and Treatment; CCHCS, IMSP&P, Volume 1, Chapter 40, 1.40 End of Life Option Act: Exemption Policy

38. Prison Rape Elimination Policy

CDCR/CCHCS is committed to providing a safe, humane, secure environment, and 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/facilities or camps and for all offenders under its jurisdiction. All sexual misconduct is strictly prohibited.

Contractor shall ensure that it and all of its providers, with respect to any proposed or actual work for CDCR/CCHCS, know and comply with the Prison Rape Elimination Policy, which can be found in the DOM, Chapter 5, Article 44 and DJJ Institutions and Camps Manual, Chapter 1, Section 1445.

Contractor's providers performing services on-site at institutions/facilities must review and sign the Prison Rape Elimination Policy Information and Acknowledgement Form, which can be obtained through contacting CCHCS Direct Care Contracts Section. The signed form is to be provided to the institution/facility during the gate clearance process.

Contractor's providers who are Board Certified Specialty Physicians providing clinic services are required to complete and sign the CCHCS Orientation Acknowledgement Letter. By signing the letter, Contractor's providers are acknowledging the Prison Rape Elimination Policy Requirements as part of the Orientation self-certification. A copy of the letter shall be maintained by the Contractor and presented upon request by CDCR/CCHCS.

39. Provider's Compliance with Institution/Facility Requirements

By entering into this Agreement, Contractor agrees to adhere to the Primary Laws, Rules, and Regulations Regarding Conduct and Association with State Prison Inmates (previously titled Secretary's Digest of Laws Related to Association with Prison Inmates), and other bylaws, rules, policies, and procedures that apply to CDCR/DJJ institutions/facilities, maintain all CDCR/DJJ security measures, and provide a safe work environment at all times. Contractor agrees that, prior to commencing service under this Agreement at an institution/facility, all Contractor's providers shall agree to adhere to these requirements. CDCR/CCHCS shall furnish Contractor with a copy of the Primary Laws, Rules, and Regulations Regarding Conduct and Association with State Prison Inmates Form (CDCR 181) upon request. CDCR's rules, policies, and procedures include the following requirements, with which Contractor and its providers shall comply:

- a. Required documents to be carried (e.g., license(s), CDCR identification badge, registry identification, if applicable)
- b. Inmate security policies and procedures (e.g., no cell phones, pagers, recording devices)
- c. Reporting for beginning/ending of shift assignment
- d. Uniform or dress code
- e. Reporting of personal illness
- f. Background investigations, fingerprinting
- g. Authorization to be on CDCR premises limited to scheduled work hours or orientation
- h. Rules governing gate clearance requirements
- i. Administrative and related service provided policies and procedures
- j. Infection control
- k. Cal/OSHA regulations relating to Bloodborne Pathogens
- l. CDCR TB Exposure Control Plan

- m. 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
- n. Sexual Harassment
- o. Workplace Violence Prevention Program (WVPP) Zero Tolerance Policy
- p. Use of Force

Contractor and its providers shall comply with all requirements noted above.

Contractor and its 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.

40. Gate Clearance

Contractor and its providers must be cleared prior to providing services. Contractor will be required to complete a Request for Gate Clearance for all its providers and other persons entering the institution/facility at 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 institution/facility contract liaison or his/her designee. CDCR/CCHCS may use the Request for Gate Clearance to run a California Law Enforcement Telecommunications System check and/or Live Scan. 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/facility 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 its provider, or decline Contractor or its provider from being allowed to provide services, at one or more institution/facility. A determination to deny access to one or more institution/facility under this Agreement may, in the sole discretion of CDCR/CCHCS, apply to other contracts under which Contractor or its providers render services. CDCR/CCHCS may prepare and disseminate a list of the names of persons whose gate clearance has been denied, via a process to be determined in CDCR/CCHCS' sole discretion. This list shall be a public record.

All persons entering the institution/facility 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 its providers clearing the institution/facility gate, or for time traveling to or from the medical clinic or other location at the institution/facility where health care services are provided.

41. 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.

42. 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 agreements, not incorporated in the Agreement, are binding on any of the parties. CDCR institution/facility executives and staff do not have authority to make oral or written amendments to this Agreement.

43. 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 agreements, not incorporated in the Agreement, are binding on any of the parties. CDCR institution/facility executives and staff do not have authority to make oral or written agreements to this Agreement.

44. Insurance Requirements

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

CDCR/CCHCS may, in its sole discretion, change the list of State employees, officials, representatives, or other State-related entities or persons who are certificate holders or insured under Contractor's insurance as required herein, 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 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 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' discretion, for a period of 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 or its provider fails to keep insurance coverage as required herein in effect at all times, the State reserves the right to terminate this Agreement and 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:

a. Commercial General Liability (if applicable for the contract services type)

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 institution/facility for performance of service. Not required for Specialty Physician Services provided on-site at the institution/facility).

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 include the following language:

State of California
California Department of Corrections and Rehabilitation (CDCR)
California Correctional Health Care Services (CCHCS)
Direct Care Contracts Section
P. O. Box 588500, Building D-2
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).

b. Auto Liability (if applicable for the contract services type)

Contractor shall ensure that it and all its providers who drive personal vehicles to, or on-site at the institution/facility, maintain motor vehicle insurance liability coverage, as required by the State of California for the operation of a personal vehicle and maintain a copy of that coverage, should CDCR/CCHCS request it for purposes of a review or vehicle incident at a CDCR institution/facility.

Contractor agrees to carry automobile liability coverage of a minimum of One Million Dollars (\$1,000,000) per claim if providing ambulance services or services using mobile vehicle MRI, CT, or mammography equipment on institution/facility grounds.

Proof of motor vehicle insurance liability must be provided prior to the Agreement approval. Contractor shall be responsible for ensuring it is maintained throughout the term of the Agreement.

c. Professional Liability (if applicable for the contract services type)

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.

Proof of professional liability insurance must be provided prior to the Agreement approval. Contractor shall be responsible for ensuring it is maintained throughout the term of the Agreement.

d. Workers' Compensation (if applicable for the contract services type)

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 its providers. Such coverage will be a condition of CDCR/CCHCS' obligation to pay for services provided under this Agreement.

Workers' compensation coverage is only applicable to this Agreement 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' 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.

e. Aircraft Liability (if applicable for the contract services type)

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.

f. Additional Insurance Provisions

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 remains in effect at all times for Contractor and its providers, the State may, in addition to any other remedies it may have, terminate the Agreement. Such coverage as referenced shall be a condition of CDCR/CCHCS' obligation to pay for services provided under this Agreement. 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.

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.

By signing this Agreement, Contractor confirms that the 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.

45. 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 California Civil Code Section 56.05, 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, CDCR/CCHCS. Defense of the provider of health care is conditioned upon maintaining insurance for professional negligence, as required under this Agreement.

46. Authority

Contractor hereby recognizes that this Agreement is entered into under the authority of PC § 5054, which places the responsibility for the custody and care of California's institutionalized public offenders on the Secretary of CDCR, and 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.

47. Small Business and DVBE Participation – Commercially Useful Functions

This Agreement shall be subject to all requirements as set forth in Assembly Bill (AB) 669, Statutes of 2003, pertaining to the following code sections: GC §§ 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, Micro Business 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.

48. 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.

49. 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.

50. Reimbursement for the Paroled

Contractor understands and agrees that CDCR/CCHCS does not have statutory authority to render payment for services provided to parolees (CCR, Title 15, § 3356), except for services provided to medical parolees (PC § 3550). CDCR/CCHCS shall make a good faith effort to notify Contractor if a CDCR/CCHCS patient's and/or DJJ youth 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:

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

51. Contracts Exempt from Public Disclosure

Government Code 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 § 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.

52. Health Records

- a. Health records shall be kept in accordance with CCR, Title 22, § 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.

- b. 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 Section 54, Confidentiality of Health Information provision, below.
- c. 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, § 70751.
- d. 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.

53. 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 health care-related, both parties agree to share all relevant information, including CDCR/CCHCS' patient and/or DJJ youth data, subject to applicable law.

54. 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 in Code of Federal Regulations Title 45, Parts 160 and 164, GC § 11019.9, California Civil Code Sections 56, et seq., and 1798, et seq., regarding the collections, maintenance, and disclosure of personal and confidential information about individuals. Referenced as "Exhibit G" and incorporated herein is a Business Associates Agreement which memorializes the parties' duties and obligations with respect to the protection, use, and disclosure of protected health information.

55. Confidentiality of Data

All financial, statistical, personal, technical and other data and information relating to the 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 GC § 11019.9 and California Civil Code Sections 1798, et seq., regarding the collection, maintenance, and disclosure of personal and confidential information about individuals.

56. Provider Misconduct and/or Contractor, Employee of Contractor, Subcontractor, 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. 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.
- 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 all agreements with its 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.

57. 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.

58. 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 in a manner consistent with the applicable standards of care.

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, and 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.

59. Audits

Contractor agrees that the awarding department, the DGS, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to the performance of this Agreement in accordance with GC § 8546.7.

The above requirement for access by audit does not extend to the Contractor's ability to ensure the integrity and protection to conduct business without impeding or interfering with areas that are considered Trade Secrets. Trade Secrets apply to the Contractor's: (a) employee hiring practices; (b) negotiation of rates with healthcare service vendors or providers; (c) contracts and contract language with healthcare service vendors and providers; (d) healthcare services contracted rates with vendors or providers; and (e) payroll information for vendors and providers.

60. Quality Assurance and Financial Audits/Reviews

- a. 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.
- b. CDCR/CCHCS may make periodic audits, at its expense, regarding the quality of health 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.
- c. 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.
- d. 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 Section 2, Dispute Resolution Process provision in this exhibit.
- e. Physicians Only: Contractor does not waive its right under California Evidence Code Section 1157 et seq. 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.

CDCR/CCHCS shall not disclose any information obtained from Contractor hereunder, except as expressly approved by Contractor or as required by law.

- f. 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 health care committee reviews and recommendations related to a CDCR/CCHCS patient and/or DJJ youth.
- g. Findings shall be submitted to Contractor, and CDCR/CCHCS will establish a review date at which time expectations and timeframes for correcting any deficiencies will be established. Failure by Contractor to correct deficiencies, within agreed upon timeframes, shall be reason for termination in accordance with Section 3(b), Termination of Agreement for Cause provision in this exhibit.

61. Unusual Circumstances

a. Major Disaster or Epidemic

In the event of any major disaster or epidemic, as declared by the Governor of the State and affecting 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 its providers as are then available. Neither Contractor nor its providers have any liability or obligation for delay or failure to provide any such services due to lack of available facilities or its providers if such lack is the result of such disaster or epidemic.

b. 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.

62. Indemnification (Supersedes provision number 5, Indemnification, of Exhibit C)

a. Terms of Contract

Contractor shall indemnify, defend, and hold harmless the State, CDCR/CCHCS, and CDCR/CCHCS' 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 the performance of this Agreement 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' officers, agents, and employees shall be responsible for their own acts and omissions.

b. 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' officers, agents, and employees shall be responsible for their own acts and omissions.

63. 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 describe the recovery process. CDCR/CCHCS will not offset an overpayment during the pendency of an appeal, filed under Section 2, Dispute Resolution Process provision of this exhibit, challenging the determination of overpayment. If recovery of the full amount of overpayment at one time imposes a financial hardship on Contractor, CDCR/CCHCS, in 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.

64. Liquidated Damages

a. General

It is the policy of the California Legislature to use liquidated damage provisions in State contracts, as set forth in California Civil Code Section 1671, subdivision (b), and PCC § 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.
- (9) If a Contractor's 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.

b. Assessment of Liquidated Damages

- (1) Failure to provide services on three (3) or more occasions may result in termination of the Agreement or the institution/facility not having to contact Contractor prior to contacting other

contractors for the duration of the Agreement term. The CCHCS Direct Care Contracts Section Health Program Manager III or designee has the sole discretion in this decision.

- (2) In the event there is a need to acquire additional resources outside this Agreement to obtain the required contracted services, the Contractor shall be responsible to pay the cost differential sustained by CDCR/CCHCS to obtain the services, due to failures of Contractor to meet the service requirements as outlined in this Agreement.

c. Manner of Collection

- (1) 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' 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.
- (2) Any liquidated damages assessment may also be collected, at CDCR/CCHCS' discretion, by offsetting the funds from payment(s) due to the Contractor after the date of assessment, in the manner set forth in Section 63, Overpayments and Offsets provision of this exhibit.

d. Interest on Pending Liquidated Damages

- (1) If it should later be determined in the dispute 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.
- (2) The Contractor shall pay interest to the State on all liquidated damages assessments which are not either paid or offset against payment due to 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.
- (3) 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.
- (4) 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.