

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

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

Pending the final resolution of any such disputes and/or claims, contractor agrees to diligently 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 hereby waiving any claim or defense that such venue is not convenient or proper.

a. **Final Payment**

The acceptance by contractor of final payment shall release the California Department of Corrections and Rehabilitation (CDCR) from all claims, demands and liability to contractor for everything done or furnished in connection with this work and from every act and neglect of CDCR and others relating to or arising out of this work except for any claim previously accepted and/or in process of resolution.

b. **Verbal Appeal**

Contractor and the program or institution contract liaison, or other designated CDCR employee of the unit for which the goods are being delivered or the service is being performed, shall first attempt in good faith to resolve the dispute or claim by informal discussion(s). Contractor and CDCR's Chief, Division of Correctional Health Care Services, shall first attempt to resolve the problem by informal discussion. Contractor agrees that CDCR's Division of Correctional Health Care Services shall be used as a resource in solving potential disputes.

c. **Informal Appeal**

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

Contractor shall identify the issues and the relief sought. Informal discussion(s) between contractor and designated Plata employee, shall be written, dated, and signed by the authors.

The program or designated Plata employee shall issue an informal written statement to contractor regarding the dispute within fifteen (15) calendar days following settlement or an impasse in the informal discussion(s) process. The written statement shall either: (1) document the dispute settlement and what, if any, conditions were reached; or, (2) document the reason(s) the dispute could not be resolved informally and provide notification to contractor of its option to file a formal appeal within thirty (30) days of the informal statement. One (1) copy of the informal statement and the discussion(s) on which it is based shall be forwarded immediately to the Plata Contract & Invoice Branch for inclusion in the Agreement file.

d. Formal Appeal – Administrative Resolution

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

(SUBJECT)

Director
Plata Support Division
California Department of Corrections and Rehabilitation
P. O. Box 4038
Sacramento, CA 95812-4038

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

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

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

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

e. Further Resolution

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

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

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

b. Termination of Agreement for Cause**(1) Immediate Termination**

CDCR may immediately terminate this Agreement under circumstances such as the following, or other such circumstances as would materially prejudice the right of inmates

under this Agreement. The Agreement termination shall be effective as of the date indicated on CDCR's notification to the Contractor.

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

CDCR 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 determines there is a substantial probability that Contractor will be financially unable to continue performance under this Agreement.

(3) Obligations Upon Termination

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

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

- (a) Deliver to CDCR a full accounting of the status of claims; and
- (b) Deliver to CDCR all property and documents of CDCR then in the custody of Contractor.

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

The termination of this Agreement shall not relieve 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 clause.

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

c. Alternative Arrangements Upon Termination

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

d. Assurances Upon Termination

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

e. Governing Forum

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

3. Responsibility Hearing

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

4. Workers' Compensation – (If Applicable)

Contractor hereby represents and warrants that Contractor is currently and shall, for the duration of this agreement, carry workers' compensation insurance, at Contractor's expenses, or that it is self-insured through a policy acceptable to the CDCR, for all of its employees who will be engaged in the performance of this agreement. Such coverage will be a condition of CDCR's obligation to pay for services provided under this agreement.

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

Contractor also agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all of Contractor's workers' compensation claims and losses by Contractor's officers, agents and employees related to the performance of this agreement.

5. 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.

6. Liability for Nonconforming Work

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

7. Liability for Loss and Damages

Any damages by the contractor to the State's facility including equipment, furniture, materials or other State property, will be repaired or replaced by the 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 contractor under this Agreement.

8. Temporary Nonperformance

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

9. Extension of Terms

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

10. Accounting Principles/ No Dual Compensation

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

11. Subcontractor/Consultant Information

Contractor is required to identify all subcontractors and consultants who will perform labor or render services in the performance of this Agreement. Additionally, the contractor shall notify the Department of Corrections and Rehabilitation, Plata Contract & Invoice Branch within ten (10) working days, of any changes to the subcontractor and/or consultant information.

12. Employment of Ex-Offenders

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

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

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

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

13. Electronic Waste Recycling

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

14. Licenses and Permits

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

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

15. Excise Tax

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

16. Permits and Certifications from State Board of Equalization

This solicitation and any resulting contract shall be subject to all requirements as set forth in Sections 6487, 7101 and sections 6452.1, 6487.3, 18510 of the Revenue and Taxation Code, and

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

17. **Conflict of Interest**

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

a. **Contractors and Their Employees**

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

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

b. **Current State Employees**

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

- (4) Officers and employees of the Department must not solicit, accept or receive, directly or indirectly, any fee, commission, gratuity or gift from any person or business organization doing or seeking to do business with the State.

c. Former State Employees

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

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

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

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

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

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

18. Disclosure

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

19. Security Clearance/Fingerprinting

The State reserves the right to conduct fingerprinting and/or security clearance through the Department of Justice, Bureau of Criminal Identification and Information (BCII), prior to award and at any time during the term of the Agreement, in order to permit Contractor and/or Contractor's employees access to State premises. The State further reserves the right to terminate the Agreement should a threat to security be determined.

20. Notification of Personnel Changes

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

21. Non Eligible Alien Certification

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

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

22. Bloodborne Pathogens

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

23. Tuberculosis (TB) Testing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

explosives, alcoholic beverages, narcotics, or any drug or drug paraphernalia, including cocaine or marijuana.

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

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

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

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

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

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

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

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

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

25. Gate Clearance

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

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

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

26. Disabled Veteran Business Enterprise (DVBE)

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

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

27. Personnel (Approval/Disapproval)

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

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

28. Insurance Requirements – (If Applicable)

Insurance as required herein shall be a condition of the State's obligation to pay for services provided under this Agreement. Prior to approval of this Agreement and before performing any work, Contractor and any subcontractor shall furnish to the State evidence of valid coverage. The following shall be considered evidence of coverage: A certificate of insurance, a "true and certified" copy of the policy, or any other proof of coverage issued by Contractor's insurance carrier. Binders are not acceptable as evidence of coverage. Providing evidence of coverage to the State conveys no rights or privileges to the State, nor does it insure any State employee or insure any premises owned, leased, used by or otherwise or under the control of the State. It does, however, serve to provide the State with proof that the Contractor and any subcontractor is 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 canceled during the term of this Agreement, Contractor's insurance Contractor must agree to give at least thirty (30) days prior notice to the State before said expiration date or notice of cancellation. Evidence of coverage required in the performance of this Agreement shall not be for less than the remainder of the term of this Agreement or for a period of not less than one year. The State and the Department of General Services (DGS) reserve the right to verify the Contractor's evidence of coverage; evidence of coverage is subject to the approval of the DGS. In the event the Contractor fails to keep insurance coverage as required herein in effect at all times, the State reserves the right to terminate this Agreement and to seek any other remedies afforded by the laws of the State of California.

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

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

a. Commercial General Liability – (If Applicable)

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

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

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

State of California
California Department of Corrections and Rehabilitation (CDCR)
Plata Contract Branch
P. O. Box 4038
Sacramento, CA 95812-4038

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

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

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

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

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

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

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

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

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

Contractor agrees that the liability insurance herein provided for shall be in effect at all times during the term of this contract. In the event said insurance coverage expires or is canceled at any time during the term of this contract, Contractor agrees to give, at least thirty (30) days prior notice to the State before said expiration date or immediate notice of cancellation. Evidence of coverage as provided for herein shall not be for less than the remainder of the term of the

contract or for a period of not less than one year. CDCR and the Department of General Services (DGS) reserve the right to verify the Contractor's evidence of coverage; evidence of coverage is subject to the approval of the DGS. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, the State reserves the right to terminate this contract and seek any other remedies afforded by the laws of this State.

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

d. **Aircraft Liability Insurance – (If Applicable)**

Provider agrees to carry a minimum coverage of \$5,000,000 per occurrence.

29. Authority

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

30. Small Business and DVBE Participation – Commercially Useful Functions

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

31. Duly Organized

Contractor is duly organized, qualified and validly existing 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.

32. 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.

33. Reimbursement for the Paroled

Contractor understands and agrees that CDCR does not have statutory authority to render payment for services provided to parolees (California Code of Regulations Title 15, Section 3356).

In the event that an inmate reaches his/her parole date while in the care of the Contractor, the appropriate CDCR Health Care Manager or physician designee shall notify, no later than ten (10) working days before the date of parole, the parolee's appropriate CDCR Parole Region and the inmate/patient's upcoming parole date and medical status. The CMO or Health Care Manager shall make a good faith effort to notify the Contractor if an inmate/patient's parole date is expected to occur while the inmate/patient is under the Contractor's care.

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

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

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

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

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

"Execution" in the context of that section means "completely performed" (not the date the agreement is signed).

35. Health Records

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

36. Right to Receive and Release Information

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

37. Confidentiality of Health Information

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

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 of 1996 (Code of Federal Regulations (CFR), Title 45, Sections 164.501 et seq.); the California Government Code Section 11019.9; California Civil Code Sections 56 et seq.; and California Civil Code Sections 1798, et seq.; regarding the collections, maintenance, and disclosure of personal and confidential information about individuals. Attached as Exhibit "G" and incorporated herein is a Business Associate Agreement which memorializes the parties' duties and obligations with respect to the protection, use, and disclosure of protected health information.

38. Confidentiality of Data

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

If the methods and procedures employed by the contractor for the protection of the contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used with the written consent of the State. The contractor shall not be required under the provisions of this paragraph to keep confidential any data already rightfully in the contractor's possession that is independently developed by the 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 the contractor pursuant to this Agreement shall be released, published, or made available to any person (except to the State) in violation of any State or federal law.

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

39. Contractor Employee Misconduct**Public Entity Agreements and Interagency Agreements:**

During the performance of this Agreement, it shall be the responsibility of the Contractor whenever there is an incident of use of force or allegation(s) of employee misconduct associated with and directly impacting inmate and/or parolee rights, to immediately notify the CDCR of the incident(s), to cause an investigation to be conducted, and to provide CDCR with all relevant information pertaining to the incident(s). All relevant information includes, but is not limited to: a) investigative reports; b) access to inmates/parolees and the associated staff; c) access to employee personnel records; d) that information reasonably necessary to assure CDCR that inmates and/or parolees are not or have not been deprived of any legal rights as required by law, regulation, policy and procedures; and e) written evidence that the Contractor has taken such remedial action, in the event of unnecessary or excessive force, or employee misconduct with inmates and/or parolees, as

will assure against a repetition of incident(s) or retaliation. To the extent that the information provided by the Contractor fails to so assure CDCR, CDCR may require that any implicated Contractor staff be denied access to and the supervision of CDCR inmates and/or parolees at the facility and access to inmate and/or parolee records. Notwithstanding the foregoing, and without waiving any obligation of the Contractor, CDCR 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 subcontracts, requiring that subcontractor(s) agree to the jurisdiction of CDCR to conduct an investigation of their facility and staff, including review of subcontractor employee personnel records, as a condition of the Agreement.

Agreements with Private Entities:

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

40. Hiring Considerations

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

41. Physician Ownership and Referral Act of 1993

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

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

42. Quality Assurance

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 inmate/patient health

care services and to provide assurances that those services rendered were cost effective, medically necessary, and delivered with the assurance of quality.

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

43. Quality Assurance and Financial Audits/Reviews

- a. CDCR reserves the right at its expense to make periodic quality of care audits and reviews for health care services rendered to inmates/patients. The purpose of these audits or reviews is to verify 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 policies and guidelines.
- b. CDCR may make periodic audits at its expense regarding the quality of medical care rendered to inmates/patients as well as verify compliance with the terms and conditions pursuant to this Agreement and compliance with State laws and regulations, including adherence to CDCR policies and guidelines. CDCR may also audit and examine records and accounts which pertain, directly or indirectly, to Contractor. Contractor shall cooperate with such auditors; however, such audit shall not interfere with the administration of Contractor nor with the delivery of health care services.
- c. Subject to applicable law, audit/review may be undertaken directly by CDCR or by third parties engaged by CDCR, including accountants, consultants and physicians. Contractor shall cooperate fully with such auditors; however, such audit shall not interfere with the administration of Contractor nor with the delivery of health care services.
- d. All adjustments, payments, and reimbursements determined by CDCR or its representatives to be necessary by such audit/review shall be effected promptly by Contractor upon issuance of a final audit report, except for portions of that report which are challenged or appealed by Contractor. In the case of challenge or appeal, Contractor shall effect the adjustment, payment or reimbursement immediately upon a settlement, or pursue remedy through the provisions as set forth in Exhibit E, Medical Contract Disputes.
- e. Physicians Only: Contractor does not waive its right under California Evidence Code Section 1157 et seq. The CDCR 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 shall maintain the confidentiality of all Contractor peer review information to which it may gain access under this Agreement. The CDCR 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, any inmate/patient records maintained by Contractor or its medical and/or professional staff or any authorized officer, agent or employee, including, but not limited to, x-rays, lab results, and any medical committee reviews and recommendations related to a CDCR inmate.

- g. Findings shall be submitted to Contractor, and CDCR will establish a review date at which time expectations and time frames for correcting any deficiencies will be established. Failure by Contractor to correct deficiencies, within agreed upon time frames, shall be reason for termination in accordance with the Termination of Agreement for Cause provision in this Exhibit.

44. **Utilization Management (UM)**

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

45. **Utilization Management Appeals**

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

a. **Informal Appeal**

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

b. **First Level Formal Appeal**

If the Contractor disagrees with the UM decision after an informal appeal, a formal first level appeal shall be submitted to the Medical Authorization Review (MAR) Subcommittee at the appropriate CDCR institution. Contractor must appeal to the MAR Subcommittee, in writing,

within sixty (60) days of receipt of MAR's notice to uphold the denial or deferral of service. The MAR Subcommittee will evaluate the appeal and respond within sixty (60) days.

c. **Second Level Formal Appeal**

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

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

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

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

If due to circumstances not reasonable 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.

47. Indemnification

a. **Terms of Contract**

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