

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

**REQUEST FOR PROPOSALS  
FOR ENTERPRISE IMAGING AND RADIOLOGY  
PROFESSIONAL MANAGEMENT SERVICES  
FOR CALIFORNIA ADULT PRISON FACILITIES**

**October 6, 2008**

**PROPOSALS DUE:**

**November 7, 2008**

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California Prison Health Care Receiver  
RFP for Professional Health Records Management Services

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## 1. REQUEST

The Receiver of the California Department of Corrections and Rehabilitation's ("CDCR") prison medical system is requesting proposals for professional management services to assist California Prison Health Care Services (CPHCS) turnaround enterprise imaging and radiology services in the areas of staffing, policies and procedures, equipment, leadership, regulatory requirements, information technology and networks, and professional contracted services. The contract awarded by the Receiver will be a service agreement with either the California Prison Health Care Receivership Corporation ("CPR") or CDCR.

## 2. BACKGROUND

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

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

The CDCR mental health and dental systems are also under court supervision as a result of two additional inmate class actions: *Coleman v. Schwarzenegger* and *Perez v. Tilton*, respectively. To avoid duplication of effort, certain health care initiatives that support the entire health care system are being coordinated by the *Plata*, *Coleman* and *Perez* courts. To facilitate such coordination, the courts have agreed that the Receiver will be responsible, in addition to his management of the medical system, for the oversight and implementation of certain mental health and dental support functions, including imaging services.

CDCR currently delivers healthcare services to over 175,000 inmate-patients in thirty-three institutions throughout the state. The scope of the healthcare mission includes dental care, primary care, acute and urgent care, chronic care management, long-term care, hemodialysis, physical therapy and rehabilitation,

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and infirmary-level care. Cases requiring specialty consultation or complex management are seen remotely by telemedicine or are referred to neighboring medical/dental offices or hospitals. The scope of imaging services required by the patient population includes plain film radiology, CT, MRI, ultrasound, nuclear medicine, dental radiology (digital and plain film), and angiography, as well as emerging imaging modalities, such as PET and SPECT scans. Currently the CDCR performs approximately 225,000 imaging and radiology procedures annually, the majority of which (65%) are done in-house. General film radiology is the most common medical imaging procedure performed (150,100 exams/yr), followed by MRI (9,000), ultrasound (9,000), CT (6,000), and mammography (4,000). Also, approximately 3 million dental radiographs are taken each year.

Until recently, healthcare operations in the thirty-three institutions were confined to silos, with no central planning, management, or oversight of services. Consequently, each institution has been responsible for managing its own radiology program, resulting in widely varying methods of service delivery and operation. For example, several institutions maintain their own CT scanners, while others contract out for these services. Neighboring institutions have contracts with different radiology medical groups at wildly different rates and levels of service. Some institutions have outdated equipment dating from the 1980's; others meanwhile have purchased new imaging devices, although they lack the expertise and equipment necessary to install them. Several prisons have purchased and installed new computed radiography imaging systems that may be mutually incompatible with one another.

The Office of the Receiver recently engaged a contractor to provide a comprehensive assessment of existing imaging services ([please see Appendix A: Enterprise Imaging & Radiology Assessment & Planning Final Report (Imaging Roadmap)]. Per the report findings,

*“the diagnostic imaging care continuum...currently ‘functions’ in a state of disrepair throughout each operational, technical, and professional level of service...If urgent action is not taken to remediate numerous problematic areas, the current mixture of deficient work processes, lack of leadership, poor technology decisions, violations of regulatory mandates, nonsensical goods and services contracts, and a profound absence of industry standards may actively cause harm to inmate-patients and staff.”*

Extensive detail about the aforementioned deficiencies can be found in the attached report, including a strategic Imaging Roadmap to remediation.

To address these issues, the Office of the Receiver seeks to contract for enterprise imaging management and staffing functions to transition the current imaging operation to one based on best practices and standards in the industry applicable to the correctional environment. The objective of the Imaging Roadmap is to improve the quality, efficiency, and timeliness of radiology services delivered to the CDCR's patient population, while also implementing effective cost management. The Imaging Roadmap entails hiring of a qualified

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firm to take over management and operations of imaging services for a period of 30 months to put into practice the required improvements prior to transition of all operations back to state control.

This redesign of imaging and radiology services will occur in concert with other improvements taking place throughout the prison healthcare system, including overhauls of information technology and telemedicine; consequently, we expect to have the infrastructure to support PACS and teleradiology in 2008.

### **3. ANTICIPATED SCOPE OF SERVICES**

#### **General Scope of Services**

The CPHCS seeks to contract for imaging services management, staffing, contract professional services management, and information technology functions to transition the current imaging services operation to one based on best practices and standards in the industry applicable to the correctional environment.

Because CDCR's healthcare records are multi-disciplinary, the contractor must pay particular attention to any unique healthcare records requirements for dentistry, and services for the disabled, in addition to overall medical care. The contractor will meet these diverse needs by working under guidance of a Steering Committee with representation from CDCR's medical and dental staff as well as representation from various court experts.

Based on the high level goals and objectives mapped out in the Imaging Roadmap the contractor will:

#### **Phase 0 – Project Planning**

1. Review the Enterprise Imaging & Radiology Assessment and Planning Roadmap for completeness and accuracy
2. Make site visits as necessary to gain familiarity with CDCR's existing healthcare system and California's correctional environment
3. Create a detailed project plan to proceed with implementation of the Imaging Roadmap
4. Perform ongoing coordination with the CPHCS Project Management Office (PMO) through attendance to PMO PM meetings and production of standard reports. Please include 40 hours per month project manager effort for this activity.

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**Phase I – Planning and Stabilization**

1. Begin an immediate project to stabilize current analog operations (all operational elements).
2. Begin recruitment for imaging leadership.
3. Engage in the current network infrastructure build-out plan representing the imaging specific needs state-wide.
4. Complete an imaging device inventory matrix for the remaining fifteen (15) sites not covered in the prior Assessment.
5. Begin all planning activities including issuance of RFP's for Dental PMS, RIS/PACS, and DICOM upgrades).
  - NOTE: IN ORDER TO MAINTAIN INDEPENDENCE AND REMOVE CONFLICTS OF INTEREST, VENDORS ARE PRECLUDED FROM PROVIDING PACS/RIS OR IMAGING/RADIOLOGICAL EQUIPMENT PROCURED AS PART OF THE SCOPE OF SERVICES FOR THIS PROJECT.
6. Initiate a project to transition the ongoing digital dental activities to a centralized database and archive configuration for state-wide interoperability.
7. Begin planning and issuance of RFP's for expanding in-house services to include: Distributed Radiology - CT – Ultrasound and Corrections owned and operated Mobile MRI.
8. Review and update all contracts for goods and services to accurately reflect expected scope of work, professional service expectations and cost savings through standardized group purchasing.
9. Determine analog to digital transition and final digital strategy for radiology group professional services interpretation.

**Phase II – Build & Integration**

1. Continue to refine and develop imaging operations and policies and procedures as Corrections begins transition from analog to digital operations.
2. Select, deploy and begin operating in new imaging services paradigm, which includes distributed radiology, on-site CT and Ultrasound and, Corrections owned and operated mobile MRI services.

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3. Engage new imaging leadership in strategic initiatives and operational, change management.
4. Complete the information technology build of the imaging and radiology information systems, and PACS databases to incorporate standardized AET, device naming, conventions and modality integration state-wide.
5. Issue RFPs for services not provided in-house.
6. Reduce radiology professional services pool of contractors in preparation for digital transition and operational go-live of RIS/PACS.

**Phase III – Operational Deployment and Adoption**

1. Begin operations utilizing all newly deployed services.
2. Precede with operational deployment and training of CPHCS staff on RIS/PACS in a phased rollout.
3. Update policies and procedures to reflect a digital work environment and to coincide with CPHCS IT policies and procedures.
4. Move all film to centralized storage facility parallel to the phased RIS/PACS rollout.
5. Migrate radiology interpretation to a centralized reading environment.
6. Monitor and measure performance outcome.

**Phase IV – Transition to CPHCS permanent staff**

1. Implement a formal plan approved by CDCR's Plata Human Resources division to transition leadership and management to a self-sustaining, permanent team of state employees.
2. Continue performance monitoring and measurement services for at least six months after transition to CPHCS.

## Detailed Scope of Services

The successful contractor will be tasked with full implementation of the Enterprise Imaging & Radiology Assessment & Planning Roadmap found on pages 182-198 of Appendix A. The scope of services includes remediation of all healthcare imaging operations within CDCR, including, but not limited to:

- Operations
  - Scope of Services
  - Staffing
  - Equipment
  - Policies and Procedures
  - Leadership
  - Regulatory Requirements
- Technology
  - Network Infrastructure
  - Information Systems (RIS/PACS/Dental)
  - Contracted Mobile Technologies
  - DICOM Readiness
  - Dental Imaging Technologies
  - *Note: include configuration and quality assurance and test plans and activities for any hardware/software included in the bid.*
- Professional Contracted Services
  - Contract Language
  - Mobile Services Providers
  - Professional Interpretation Services

The detailed scope of services encompasses all relevant domains required to implement the Imaging Roadmap, inclusive of all services to plan, manage, and implement the new Imaging Program, including management of software and hardware, and professional service procurements. These are the services desired and required by the Receiver.

Proposing firms may propose alternative approaches or amendments in addition to, or in replacement of, the Roadmap. If presented, alternatives must be described separately and clearly indicated.

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During *Phase I – Planning and Stabilization* the selected vendor to confirm the Roadmap findings and recommendations, complete visits to all affected sites, and complete a detailed plan for full implementation of the new Imaging Program, including staffing, management, imaging hardware and software, information technology hardware and software, and professional imaging services. . The Receiver will review the plan and adjust as needed. The final completed Roadmap will serve as the basis for contracted services in Phase II.

The Roadmap is to be used as the basis for cost proposals. Respondents must address all the recommendations in the report, and the proposed costs must provide for full implementation of the new Imaging Program as recommended in the Roadmap. Additionally, alternatives to the Roadmap may be proposed should bidders feel that other approaches may in some manner be an improvement over the Roadmap. Should alternative(s) be proposed, the full cost for the alternative(s) must be provided, and the cost differential with Roadmap clearly shown.

Bidders should complete the Cost Proposal provided as Appendix B. The bid must also include a work plan detailing the tasks, schedules, and dependencies; and names, CVs, and estimated effort for key people proposed.

## 4. DELIVERABLES AND EXPECTATIONS:

### A. Deliverables

#### **Bidder Defined Deliverables:**

Bidders should propose specific milestones and key deliverables for each phase of the Road Map. The contractually required deliverables will be stipulated in conjunction with the approved work plan and associated staffing plans and schedules. The total duration of the contract is expected to be 30 months. At the Receiver's discretion, this contract may be extended as required.

#### **Required Project Management Deliverables:**

Beyond bidder defined deliverables, all bids are to contain the following project management deliverables:

**Project Management Plan (PMP):** to be completed within four weeks of the project start date. The PMP should be designated as Deliverable 1, and meet the following expectations:

- Confirm the scope of the contracted bid

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- Incorporate the tasks, resources, due dates, and deliverables for CPHCS to meet its responsibilities
- Establish tasks, deliverables, and resources for integration of imaging turnaround activities with other projects:
- Constitute a fully actionable plan allocating resources, establishing the baseline schedule, incorporating inter and intra project dependencies, enabling detailed progress reports
- Integrate contractor project management activities with the CPHCS Project Management Office (PMO) project tracking and reporting processes, including production or inputs into:
  - Project schedule, issue and risk management plans
  - Scope and Change Management Plan
  - Monthly Status Reports
  - Communications Management Plan

**Ongoing Coordination with the CPHCS Project Management Offices (PMO):** to be provided throughout the duration of the contract.

- Please include 40 hours per month for coordination by the proposed PM
- Define any other coordination activities, hours, and staffing

**B. Other Expectations:**

During the course of this engagement, the contractor will be expected to

1. Lead a kick-off meeting for the project in Sacramento, CA.
2. Open and staff a field office in the Sacramento area for the duration of the project.
3. Present a series of communications to the CPHCS radiology and healthcare staff statewide, intended to communicate about forthcoming changes and gather suggestions and feedback from front-line personnel.
4. Present project deliverables and analysis by the project milestone dates and follow up with regular presentations to the Imaging Services Steering Oversight Committee.

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5. During the implementation phase, provide a monthly written report of progress, findings, metrics, issues, setbacks, and any suggested plan modifications in accordance with CPHCS Project Management Office procedures.
6. Present monthly status on the budget and any issues or deviations from original projects in accordance with CPHCS Project Management Office procedures.
7. Participate in relevant professional committees established by the Receivership for coordination and direction of all health services.
8. Coordinate with and participate in other projects including the Clinical Data Repository project, the 10,000 bed project, and projects for improvement of laboratory and health information management services, among others.
9. Create and implement training and education programs to enable imaging services staff to meet regulatory and quality standards.

**C. Organization and Direction**

The contractor will work at the direction of the Receiver or the Receiver's designee. The contractor will be working under the oversight of a project manager assigned from the Receiver's Project Management Office. All work of contractor's staff will be at the day-to-day direction of a Project Executive or Project Director designated by the contractor.

## **5. SELECTION PROCESS**

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

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

The Receiver reserves the right to seek clarification of information submitted in response to this RFP and/or request additional information during the evaluation process. The Receiver reserves the right to accept or reject any or all

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qualifications and selections when it is determined, in the sole discretion of the Receiver, to be in the best interest of the Receiver.

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

## **6. EVALUATION CRITERIA**

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

1. Respondent understands the context of CDCR’s medical service delivery issues by reviewing the website and being familiar with the Turnaround Plan of Action, court reports and documents.
2. Respondent’s proven experience, capabilities and resources, at both the corporate and individual levels, in providing imaging consulting services to programs comparable in size, scope of work, and urgency.
3. Respondent demonstrates clear understanding of different imaging technologies and the unique requirements and needs of each, to include:
  - a. Plain film radiology
  - b. Mammograms
  - c. CT
  - d. MRI
  - e. Ultrasound
  - f. Dental Imaging
  - g. RIS/PACS
4. Respondent demonstrates a clear understanding and knowledge of:
  - a. California laws, rules, and regulations regarding the management of health records.
  - b. Federal and state laws, rules, and regulations regarding the privacy and security of health information.

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- c. Specific rules and regulations regarding correctional facilities.
  - d. Relevant and helpful accreditation agency standards.
5. Respondent demonstrates an approach to the unique challenges of the CDCR environment and record systems that:
  - a. Is strategic in nature and provides an overall approach to the entire CA prison system and not just a facility by facility approach.
  - b. Suggests creative approaches to immediately addressing and solving the institutional issues.
  - c. Represents a commitment of personnel with a diversity of experiences and solution approaches.
  - d. Provides proven systems, management techniques, and required expertise and resources designed to facilitate timely.
  - e. Shows the ability to facilitate stakeholder coordination and timely and effective decision-making.
6. The proposal must articulate a clear project approach and project plan that:
  - a. Clearly addresses the issues, goals, and objectives outlined under the Section labeled "Detailed Scope of Service".
  - b. Outlines high level tasks, milestones, and a projected time line.
  - c. Clearly allocates resources for each project phase and task.
  - d. Commits the contractor and specific individuals (with percent of time) to this project without appearing to be inflated.
7. The proposal must present a diverse, experienced, and qualified Core Team by:
  - a. Presenting the qualifications and experiences of each team member as compared to the selection criteria discussed above (items 1 to 5).
  - b. Demonstrating the availability and commitment of key staff.
  - c. Clearly identifying the key staff that will perform each of the phases and why their expertise is required.
8. Presents a reasonable budget and relative value of services provided.

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9. Completeness and comprehensiveness of response to this RFP and compliance with the submittal requirements.
10. Quality of oral interviews including technical analysis and presentation (if requested by the Receiver).
11. Legal actions that might affect Respondent's ability to perform as contracted.
12. Absence of any relationship that could constitute a conflict of interest or otherwise impede the ability of the Respondent to protect the interests of the Receiver.

## 7. SUBMITTAL REQUIREMENTS

### 1. Key Action Dates

Event	Date
RFP Issued	October 6, 2008
Bidder's Conference (see below)	October 17, 2008 (estimated)
Deadline for questions regarding RFP	October 21, 2008
Responses to questions	October 27, 2008
Proposals due	November 7, 2008
Notification for interviews (estimated)	November 14, 2008
Interviews (estimated)	Week of December 1, 2008
Selection announced (estimated)	December 19, 2008
Estimated project start date (estimated)	January 2, 2008

### 1. Addenda

Any questions regarding the RFP should be submitted to CPR in writing (via postal service or email). CPR will, at its discretion, respond to questions in an addendum. Any necessary information not included in this RFP that CPR deems necessary and relevant to responding to the RFP will also be issued in an addendum. CPR makes no guarantee that all questions submitted will be answered.

Addenda will be sent to all known applicants. If the Respondent did not receive this RFP directly from CPR, notify CPR in writing of a request to receive any addenda by **October 21, 2008**.

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**2. Bidder' Conference**

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

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

Additionally, firms have found in the past that it is essential to partner with other firms to put together a team with sufficient depth and breadth to meet the challenges posed by turnaround for an organization servicing in excess of 170,000 people in exceptionally challenging settings at 33 locations across the state.

**3. Format**

Proposals should be clear, concise, complete, well organized and demonstrate both Respondent's qualifications and its ability to follow instructions.

8 (eight) bound copies of the Proposal should be provided, with all materials spiral bound into books of approximately 8-1/2" x 11" format, not to exceed sixty (60) single-sided pages total length. At least one (1) copy must contain original signatures and be marked ORIGINAL.

Pages must be numbered. We will not count, in the total, the graphic cover sheet, cover letter, table of contents, blank section dividers (tabs), explanations about legal actions, and a maximum of 12 resumes, which may be included in an appendix.

The entire Proposal shall also be submitted in electronic (pdf) format on CD or electronically by e-mail, organized in the same manner as the printed submissions.

The Proposal shall be placed in a sealed envelope with the submitting firm's name on the outside of the envelope.

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

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

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

#### **4. Contents**

The Proposal must include the following items:

- a. A cover letter signed by an officer of the firm submitting the Proposal, or signed by another person with authority to act on behalf of and bind the firm. The cover letter must contain a commitment to provide the required Services described with the personnel specified in the submission. The letter should certify that the information contained in the Proposal is true and correct. Please also indicate the contact person(s) for the selection process along with contact information.
- b. Executive Summary: The Executive Summary must include a clear description of the primary advantages of contracting with your organization. It should also include a brief explanation of how the Respondent satisfies the evaluation criteria, and a brief statement that demonstrates Respondent's understanding of the desired Services.
- c. Demonstration of the Respondent's Qualifications: Please provide the following information:
  - (1) Your company's name, business address and telephone numbers, including headquarters and local offices.
  - (2) A brief description of your organization, including names of principals, number of employees, longevity, client base, and areas of specialization and expertise.
  - (3) A description of your company's prior experience related to correctional and healthcare facilities.
  - (4) A description of your company's prior experience in California.
  - (5) A description of your company's specific areas of technical expertise as they relate to this RFP.

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- (6) A description of your company's internal training and quality assurance programs.
  - (7) The proposer must demonstrate the capacity to bring forward sufficient qualified staff to provide operational support needed during the management phase of this engagement.
- d. Professional references: Describe previous work on no more than three projects of comparable scope and magnitude for which you provided similar types of services. Provide complete reference information including project name, location, client, total contract amount (and firm's amount if different), principal-in-charge, day-to-day technical project director/manager, key staff, date completed, client reference (name, current position and phone number), and a brief narrative of project description for each project identified and described above. **Experience may not be considered if complete reference data is not provided or if named client contact is unavailable or unwilling to share required information.**
  - e. Qualifications of Technical Personnel: Submit current resumes for Key Personnel committed to this project and a statement regarding their local availability. Specifically describe previous related experience, its pertinence to this program, and provide references including the name address and telephone number of a contact person who can verify the information provided. Provide brief description of referenced project(s), as well as any professional certifications, accreditation, special licensing or other qualifications which qualifies the professional to perform in their designated area of responsibility.
  - f. Proposed changes to Scope of Services: Respondent should provide any proposed modifications to the objectives, deliverables and timelines identified in this RFP.
  - g. Legal action: Respondent must provide a listing and a brief description of all material legal actions, together with any fines and penalties, for the past five (5) years in which (i) Respondent or any division, subsidiary or parent company of Respondent, or (ii) any member, partner, etc., of Respondent if Respondent is a business entity other than a corporation, has been:
    - (1) A debtor in bankruptcy;
    - (2) A defendant in a legal action alleging deficient performance under a services contract or in violation of any statute related to professional standards or performance;

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- (3) A respondent in an administrative action for deficient performance on a project or in violation of a statute related to professional standards or performance;
  - (4) A defendant in any criminal action;
  - (5) A principal of a performance or payment bond for which the surety has provided performance or compensation to an obligee of the bond; or
  - (6) A defendant or respondent in a governmental inquiry or action regarding accuracy of preparation of financial statements or disclosure documents.
- h. Default Termination: A disclosure of whether your company has defaulted in its performance on a contract in the last five years, which has led to the termination of a contract
- i. Conflict of Interest: Identify any existing financial relationships with other vendors that may be a part of your proposal, and explain why those relationships will not constitute a real or perceived conflict of interest.
- j. Cost Proposal: Provide a proposed budget for performing all services over the duration of the contract:
- (1) The proposal shall include a table showing by proposed individual the percent of Full Time Equivalent (FTE) proposed for each individual annually, the cost for the individual, and the total for professional services.
  - (2) The proposal will also include estimates for all capital costs, office and travel expenses.
  - (2) Local staff is preferred. When staff must be provided from outside the Sacramento area, demonstrate controls to be established to limit travel and living expenses. Travel within the state to visit facilities will be at state rates.

**5. Modification or Withdrawal of Proposal.**

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

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**6. Public Opening**

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

**7. General Rules**

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

**8. Reservation of Rights**

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

- a. Reject any and all Proposals, or cancel this RFP.
- b. Waive or correct any minor or inadvertent defect, irregularity or technical error in any Proposal.
- c. Request that certain or all candidates supplement or modify all or certain aspects of their respective Proposals or other materials submitted.
- d. Procure any services specified in this RFP by other means.
- e. Modify the specifications or requirements for services in this RFP, or the required contents or format of the Proposals prior to the due date.
- f. Extend the deadlines specified in this RFP, including the deadline for accepting Proposals.
- g. Negotiate with any or none of the Respondents.

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- h. Terminate negotiations with a Respondent without liability, and negotiate with other Respondents.
- i. Award a contract to any Respondent.

**Inquiries in regard to this RFP should be addressed to:**

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501 J Street  
P.O. BOX 4038  
Sacramento, CA 95812-4038  
Stan.ketchum2@cdcr.ca.gov  
916.802.0353**

## Appendix A - Enterprise Imaging & Radiology Assessment & Planning

The Enterprise Imaging & Radiology Assessment Report can be downloaded at the CPHCS Web site at <http://www.cphcs.ca.gov/receiver.aspx>

The links below provide direct access to the document.

- [Enterprise Imaging - Part 1 \(Cover\), 07/14/2008](#) (351K)
- [Enterprise Imaging - Part 2 \(Cover Letter\), 07/14/2008](#) (300K)
- [Enterprise Imaging - Part 3 \(Table of Contents\), 07/14/2008](#) (294K)
- [Enterprise Imaging - Part 4 \(Acronyms & Abbreviations\), 07/14/2008](#) (308K)
- [Enterprise Imaging - Part 5 \(Executive Summary of Findings\), 07/14/2008](#) (447K)
- [Enterprise Imaging - Part 6 \(Executive Introduction\), 07/14/2008](#) (368K)
- [Enterprise Imaging - Part 7 \(Assessment\), 07/14/2008](#) (1.8M)
- [Enterprise Imaging - Part 8 \(Sites Visited\), 07/14/2008](#) (3.3M)
- [Enterprise Imaging - Part 9 \(Prison Modeling\), 07/14/2008](#) (1.1M)
- [Enterprise Imaging - Part 10 \(Strategic Roadmap\), 07/14/2008](#) (1.4M)
- [Enterprise Imaging - Part 11 \(Appendix\), 07/14/2008](#) (602K)
- [Clinical Laboratory Assessment & Improvement Strategy, 04/07/2008](#) (1.8M)

## **Appendix B – Cost Proposal**

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

## Appendix C – Scope of Work

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

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

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

The Receiver reserves the right to reject any response that:

- 1) Declines the State Terms and Conditions in whole or in part;  
OR
- 2) Replaces the State Terms and Conditions in whole or in part with vendor language;  
OR
- 3) Proposes changes in the State Terms and Conditions that materially affect the services described in the Scope of Work. Changes materially affecting the Scope of Work may include items that, in the judgment of the Receiver:
  - Place undo limits on the extent, nature, or delivery of the services being bid
  - Provide an advantage to the bidder over other bidders that have accepted the State's contract Terms and Conditions.

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## **PROFESSIONAL IMAGING MANAGEMENT SERVICES AGREEMENT**

This Professional Imaging Management Services Agreement (“**Agreement**”) is made by and between \_\_\_\_\_ (“**Manager**”), with a principal place of business at \_\_\_\_\_, and the California Prison Healthcare Receivership Corporation (“**CPR**”), with a principal place of business at 501 J Street, Suite 100, Sacramento, CA 95814, effective \_\_\_\_\_, 2008 (“**Effective Date**”).

### **RECITALS**

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

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

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

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

### **AGREEMENT**

#### **1. Scope and Personnel.**

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

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

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

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

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

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

**1.7 Safety and Accident Prevention.** In performing work under this Agreement, Manager shall conform to any specific safety requirements contained in the Agreement or required by law or regulation. Manager shall take any additional precautions as CPR

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may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Agreement in accordance with the default provisions hereof.

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

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

**1.10 Stop Work.** CPR may, at any time, by written notice to Manager, require Manager to stop all, or any part, of the work called for by this Agreement for a period up to ninety (90) days after the notice is delivered to Manager, and for any further period to which CPR and Manager may agree. The notice shall be specifically identified as a "Stop Work Order" and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, Manager shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Manager, or within any extension of that period to which CPR and Manager shall have agreed, CPR shall either: (i) cancel the Stop Work Order; or (ii) terminate the work covered by the Stop Work Order as provided for in the termination for convenience provision of this Agreement. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, Manager shall resume work. CPR shall make an equitable adjustment in the delivery schedule, the Agreement price, or both, and the Agreement shall be modified, in writing, accordingly, if: (i) the Stop Work Order results in an increase in the time required for, or in Manager's cost properly allocable to, the performance of any part of this Agreement; and (ii) Manager asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage;

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provided, that if CPR decides the facts justify the action, CPR may receive and act upon a proposal submitted at any time before final payment under this Agreement. If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated, CPR shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. CPR shall not be liable to Manager for loss of profits because of a Stop Work Order issued under this clause.

## **2. Payment.**

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

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

## **3. Warranties.** Manager represents and warrants that:

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

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

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

**3.4 Covenant Against Gratuities.** No gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Manager, or any agent or representative of Manager, to any officer or employee of CPR or the State with a view toward securing the Agreement or securing favorable treatment with respect to any determinations

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concerning the performance of the Agreement. For breach or violation of this warranty, CPR shall have the right to terminate the Agreement, either in whole or in part, and any loss or damage sustained by CPR or the State in procuring on the open market any items which Manager agreed to supply shall be borne and paid for by Manager. The rights and remedies of CPR provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

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

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

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

#### **4. Term and Termination.**

**4.1 Term.** This Agreement shall continue in effect for an initial term of thirty (30) months, commencing upon the Effective Date. After the initial term, CPR may renew this Agreement for an additional one-year term by providing Manager with written notice at least sixty (60) days prior to the expiration of the initial term.

**4.2 Termination For Convenience.** CPR may terminate this Agreement for convenience at any time by giving Manager at least sixty (60) days prior written notice.

**4.3 Termination For Breach.** CPR or Manager may terminate this Agreement if CPR or Manager, as applicable, notifies the other party to this Agreement in writing of the other party's material breach of the Agreement and such breach is not cured within thirty (30) days of such notice. Termination shall not limit either party from pursuing other available remedies.

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

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

**7. Audit.** CPR or its designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of the Imaging Management Services under this Agreement. Manager shall: (i) maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated; (ii) upon reasonable prior written notice, allow the auditor(s) access to such records during normal business hours; (iii) allow interviews of any employees who might reasonably have information related to such records; and (iv) include a similar right of CPR to audit records and interview staff in any subcontract related to performance of this Agreement. All non-State auditors will be required to comply with Manager's policies and procedures, including agreement in writing by each individual participating in the audit or examination to abide by Manager's confidentiality and security requirements.

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

**9. Indemnification.** Manager shall indemnify, defend and save harmless CPR, the State, their officers, agents and employees from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Manager in the performance of this Agreement.

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

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

**12. Confidentiality.**

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

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

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

**13. Nondiscrimination.** During the performance of this Agreement, Manager and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Manager and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Manager and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Cal. Gov. Code § 12990 et seq.) and the applicable regulations promulgated thereunder (2 C.C.R. §§ 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Cal. Gov. Code § 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Manager and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Manager shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

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

**15. Drug-Free Workplace Certification.** Manager shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Cal. Gov. Code § 8350 et seq.) and will provide a drug-free workplace by taking the following actions: (a) publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Cal. Gov. Code § 8355(a); (b) establish a Drug-Free Awareness Program as required by Cal. Gov. Code § 8355(b) to inform employees

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about all of the following: (i) the dangers of drug abuse in the workplace; (ii) the person's or organization's policy of maintaining a drug-free workplace; (iii) any available counseling, rehabilitation and employee assistance programs; and, (iv) penalties that may be imposed upon employees for drug abuse violations ; (c) provide, as required by Cal. Gov. Code § 8355(c), that every employee who works on the proposed or resulting Agreement: (i) will receive a copy of the company's drug-free policy statement; and, (ii) will agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

**16. Sweatfree Code of Conduct.** Manager declares under penalty of perjury that no equipment, materials, or supplies furnished to CPR pursuant to the Agreement have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Manager further declares under penalty of perjury that it adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website, located at [www.dir.ca.gov](http://www.dir.ca.gov), and PCC § 6108. Manager shall cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of CPR, the State, the Department of Industrial Relations, or the Department of Justice to determine Manager's compliance with the requirements under this section.

**17. Recycling Certification.** Manager shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the PCC § 12200, in products, materials, goods, or supplies offered or sold to CPR, regardless of whether the product meets the requirements of Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.

**18. Child Support Compliance Act.** Manager shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code, and Manager, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

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

**20. Conflict of Interest.** Manager shall comply with the State law provisions in PCC §§10410 and 10411 regarding the hiring or engagement of current or former State

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employees to furnish services under or be involved with this Agreement . If Manager violates any provisions of §§ 10410 and 10411, this Agreement shall be void pursuant to PC C § 10420.

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

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

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

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

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

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

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

**28. Assignment.** Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, except that CPR may assign, sublicense or otherwise transfer this Agreement or any right granted under this Agreement without the prior written consent of Manager to the CDCR or any agency of the State of California which is established to meet the requirements and obligations of the CDCR or is a

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successor to the responsibilities of CPR. This Agreement and the conditions contained herein shall apply to, be binding upon, and inure to the assignees, successors, agents and assigns of Manager and CPR.

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

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

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

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

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

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

**CALIFORNIA PRISON HEALTH CARE MANAGER  
RECEIVERSHIP CORPORATION**

By

By

Printed Name: J. Clark Kelso

Printed Name:

Title: Receiver

Title:

Date:

Date:

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**EXHIBIT A**  
**Statement of Work (“SOW”)**

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**EXHIBIT B**

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

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

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**EXHIBIT C**  
**Business Associate Addendum**

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

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

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

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

**ARTICLE 1**

**DEFINITIONS**

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

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

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

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

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

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

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

## **ARTICLE 2**

### **CONFIDENTIALITY**

#### **2.1 Obligations and Activities of Business Associate.**

Business Associate shall:

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

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

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

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

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

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

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

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

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

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

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

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

**2.3 Specific Use and Disclosure Provisions.**

(a) Except as otherwise limited in this Addendum, Business Associate may use PHI only to carry out the responsibilities of the Business Associate under the Agreement and for the proper internal management and administration of Business Associate. (b) Except as otherwise limited in this Addendum, Business Associate may only disclose PHI (i) as Required By Law, or (ii) in the fulfillment of its obligations under the Agreement and provided that Business Associate has first obtained (A) the consent of Covered Entity for such disclosure, (B) reasonable assurances from the person to whom the information is disclosed that the PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and (C) reasonable assurances from the person to whom the information is disclosed that such person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

**2.4 Obligations of Covered Entity.**

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

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

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

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

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

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

### ARTICLE 3

#### SECURITY

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

(a) require its agents and subcontractors to provide security for all data that is electronically exchanged between Covered Entity and Business Associate; (b) provide, utilize, and maintain equipment, software, services and testing necessary to assure the secure and reliable transmission and receipt of data containing PHI; (c) maintain and enforce security management policies and procedures and utilize mechanisms and processes to prevent, detect, record, analyze, contain and resolve unauthorized access attempts to PHI or processing resources; (d) maintain and enforce policies and guidelines for workstation use that delineate appropriate use of workstations to maximize the security of data containing PHI; (e) maintain and enforce policies, procedures and a formal program for periodically reviewing its processing infrastructure for potential security vulnerabilities; (f) implement and maintain, and require its agents and subcontractors to implement and maintain, appropriate and effective administrative, technical and physical safeguards to

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

## **ARTICLE 4**

### **MISCELLANEOUS**

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

#### **4.2 Term and Termination.**

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

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

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

(ii) If Business Associate determines that returning the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Covered Entity's agreement that return or destruction of

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PHI is infeasible, Business Associate shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

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

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

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

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