

Note: All sections must be completed. Incomplete forms will be returned to the originating department.

I. CONTRACT INFORMATION:

Agency/Department: AHS/ Corrections Contract #: 45473 Amendment #:
 Vendor Name: Wellpath, LLC. VISION Vendor No: 411327
 Vendor Address: 3340 Perimeter Hill Dr., Nashville, TN 37211
 Starting Date: 07/01/23 Ending Date: 6/30/2026 Amendment Date:
 Summary of agreement or amendment: Comprehensive Health Services

II. FINANCIAL & ACCOUNTING INFORMATION

Maximum Payable: \$113,524,46 Prior Maximum: \$ Prior Contract # (If Renewal):
 3.73
 Current Amendment: \$ Cumulative amendments: \$ % Cumulative Change:
 Business Unit(s): 3520; ; - [notes:] VISION Account(s): ;
 Estimated Funding Split:

100.00	%	GF	%	SF	%	EF	%	Other	%
	%	TF	%	GC	%	FF	%	(name)	

III. PROCUREMENT & PERFORMANCE INFORMATION

A. Identify applicable procurement process utilized.
 Standard Bid/RFP Simplified Sole Source (See B.) Qualification Based Selection Statutory
 B. If Sole Source Contract, contract form includes self-certification language? Yes N/A
 C. Contract includes performance measures/guarantees to ensure the quality and/or results of the service? Yes No

IV. TYPE OF AGREEMENT (select all that apply)

Personal Service Construction Arch/Eng. Marketing Info. Tech. Prof. Service
 Non-Personal Service Retiree/Former SOV EE Financial Trans Zero-Dollar Privatization Other
 Commodity

V. SUITABILITY FOR CONTRACT FOR SERVICE

Yes No n/a Does this contract meet the determination of an Independent Contractor? If "NO", the contractor must be set up and paid on payroll through the VTHR system.

VI. CONTRACTING PLAN APPLICABLE

Is any element of this contract subject to a pre-approved Agency/Dept. Contracting Waiver Plan? Yes No

VII. CONFLICT OF INTEREST

By signing below, I (Agency/Dept. Head) certify that no person able to control or influence award of this contract had a pecuniary interest in its award or performance, either personally or through a member of his or her household, family, or business.
 Yes No Is there an "appearance" of a conflict of interest so that a reasonable person may conclude that this party was selected for improper reasons: (If yes, explain)

VIII. PRIOR APPROVALS REQUIRED OR REQUESTED

Yes No Agreement must be Certified by the Attorney General under 3 V.S.A. § 342 (sign line #4 below) DS
 Yes No Attorney General review As To Form is required (\$25,000 and above) or otherwise requested. (AAG initial)
 Yes No Agreement must be approved by the Secretary of ADS/CIO
 Yes No Agreement must be approved by the CMO: for Marketing services over \$25,000
 Yes No Agreement must be approved by Comm. Human Resources: for Privatization, Retirees, Former Employees, & if a Contract fails the IRS test.
 Yes No Agreement must be approved by the Secretary of Administration Diane Irish 4/18/2023

IX. AGENCY/DEPARTMENT HEAD CERTIFICATION; APPROVAL

I have made reasonable inquiry as to the accuracy of the above information (sign in order):
 4/17/2023 Nicholas Deml 4/20/2023 4/20/2023 Vonn W. Daboz

1-Date	1-Agency/Department Head	2-Date	2-Agency Secretary (if required)
3a-Date	3a-CIO	3b-Date	3b-CMO
4-Date	4-Attorney General	5-Date	5-Secretary of Administration
4/17/2023	Lauri Fisher	4/25/2023	Douglas Farnham

4/20/2023 Jonathan Provost 4/24/2023 Tim Metayer 4/25/2023



State of Vermont
Agency of Digital Services
One National Life Drive, Dewey 2nd Floor
Montpelier, VT 05620-2001

[phone] 802-828-4141

MEMO

Date: 04/14/2023

DocuSigned by:
Shawn Nailor
E4490DF18FAE444...

4/24/2023

To: Shawn Nailor, Secretary, Agency of Digital Services

VIA: Jon Provost

DocuSigned by:
Jonathan Provost
5ADFB3E534B6452...

4/20/2023

From: ADS Procurement Advisory Team (PAT)

Subject: CIO approval of contract 45473 between the Department of Corrections and Wellpath, LLC for Comprehensive Health Services.

The Agency of Digital Services (ADS) PAT team reviewed contract 45473 between the Department of Corrections and Wellpath, LLC for Comprehensive Health Services, at our April 14, 2023 meeting.

The DOC is responsible for ensuring healthcare is provided to incarcerated individuals. The DOC Health Services Division (HSD) oversees a comprehensive health services program that provides health services to incarcerated individuals as guaranteed by the 8th Amendment of the United States Constitution, required by [state law](#), and in compliance with the National Commission for Correctional Health Care (NCCHC) standards for ongoing accreditation.

The DOC HSD has created this framework of the desired state based on the current health systems as well as the future and desired health systems within the DOC and AHS. The expectation is that the DOC HSD will create and guide the implementation of health systems and the Contractor will provide the comprehensive health services necessary to carry out the DOC HSD's vision of the Comprehensive Health Services program.

The period of Contractor's performance of the services defined in this contract shall begin on July 01, 2023 and end on June 30, 2026. The maximum amount payable of the contract is \$113,524,463.73.

The Agency of Digital Services Procurement Advisory Team recommends CIO approval of this Contract.



ADS Review Verification Sheet

Project Name:	Correctional Health Services
Agency/Dept.	AHS DOC

ADS Reviewer Summary & Sign-off

Reviewer	Memo			
	Reviewer Name	Date Received	Date Review Completed	Ok to Proceed to with project from Reviewer's perspective?
IT Contracting Specialist	Jon Provost			
Chief Financial Officer	Kate Slocum			
Enterprise Architecture	John Hunt			
Chief Information Security Officer	Scott Carbee			
Chief Data Officer	Kristin McClure			
IT Leader				
Chief Technology Officer	Mark Combs			
Deputy Secretary	Shawn Nailor			
CIO	John Quinn			Date e-signed approval:

	RFP			
	Reviewer Name	Date Received	Date Review Completed	Ok to Post RFP from Reviewer's perspective?
IT Contracting Specialist	Jon Provost	5/2/2022	5/5/2022	Yes
Chief Financial Officer	Kate Slocum	5/2/2022	5/4/2022	Yes
EPMO/OPM		5/2/2022		
Enterprise Architecture	Bill Froberg	5/2/2022	5/4/2022	Yes
Chief Information Security Officer	Scott Carbee	5/2/2022	5/5/2022	Yes
Chief Data Officer	Kristin McClure	5/2/2022	5/4/2022	Yes
IT Leader	Darin Prail	5/2/2022	5/4/2022	Yes
Risk Management	Rebecca White	5/2/2022	5/5/2022	Yes
Chief Technology Officer	Mark Combs	5/2/2022	5/5/2022	Yes
Deputy Secretary	Shawn Nailor	5/2/2022		
CIO	John Quinn	5/2/2022		Date e-signed approval:

	Contract 45473			
	Reviewer Name	Date Received	Date Review Completed	Ok to Sign Contract from Reviewer's perspective?
IT Contracting Specialist	Jon Provost	4/11/2023	4/13/2023	Yes
Chief Financial Officer	Kate Slocum	4/11/2023	4/13/2023	Yes
EPMO/OPM		4/11/2023		
Enterprise Architecture	Bill Froberg	4/11/2023	4/13/2023	Yes
Chief Information Security Officer	Scott Carbee	4/11/2023	4/13/2023	Yes
Chief Data Officer	Valerie Giroux	4/11/2023	4/13/2023	Yes
IT Leader	Mike Nagle	4/11/2023	4/14/2023	Yes
Risk Management	Rebecca White	4/11/2023	4/13/2023	Yes
Chief Technology Officer	Mark Combs	4/11/2023	4/13/2023	Yes
Deputy Secretary	Denise Reilly-Hughes	4/11/2023		
CIO	Shawn Nailor			Date e-signed approval:

AGO Certification Checklist

Is this a retainer-type contract? No

If yes, can compliance be certified at the retainer level? Select One

Part I: please answer the below three questions:

- Yes 1) The agency will not supervise the daily activities or methods and means by which the contractor provides services, other than supervision necessary to ensure that the contractor meets performance expectations and standards.
- Yes 2) The services provided are not the same as those provided by classified State employees within the agency.
- Yes 3) The contractor customarily engages in an independently established trade, occupation, profession, or business.

Part II: If answering “no” to one or more of the above questions, check the box next to each of the below items that apply to the requested contract for services:

- A) The services are not available within the agency or are of such a highly specialized or technical nature that the necessary knowledge, skills, or expertise is not available within the agency.
- B) The services are incidental to a contract for purchase or lease of real or personal property.
- C) There is a demonstrated need for an independent audit, review, or investigation; or independent management of a facility is needed as a result of, or in response to, an emergency such as licensure loss or criminal activity.
- D) The State is not able to provide equipment, materials, facilities, or support services in the location where the services are to be performed in a cost-effective manner.
- E) The contract is for professional services, such as legal, engineering, or architectural services, that are typically rendered on a case-by-case or project-by-project basis, and the services are for a period limited to the duration of the project, normally not to exceed two years or provided on an intermittent basis for the duration of the contract.
- F) The need for services is urgent, temporary, or occasional, such that the time necessary to hire and train employees would render obtaining the services from State employees imprudent. Such contract shall be limited to 90 days' duration, with any extension subject to review and approval by the Secretary of Administration.
- G) Contracts for the type of services covered by the contract are specifically authorized by law. (Please provide the legal citation)
- H) Efforts to recruit State employees to perform work, authorized by law, have failed in that no applicant meeting the minimum qualifications has applied for the job.
- I) The cost of obtaining the services by contract is lower than the cost of obtaining the same services by utilizing State employees. When comparing costs, the provisions of section 343 of this title shall apply.

Contract Name: Wellpath LLC
Contract #: 45473

AGO Certification Checklist

If applicable, provide additional comments here.

Caitlin Touchette

Project Manager Name

04/17/2023

Date

From: [White, Rebecca M](#)
To: [Kerry Mangold](#); [Titus, Max \(they/them\)](#)
Cc: [LaPlant, Tatum](#); [Brett Arnold](#)
Subject: RE: Insurance addition to Attachment D - Modification to Customary Provisions
Date: Friday, March 31, 2023 3:57:40 PM

Yes, its fine. The State will need a COI indicating the coverages required.

Thanks

Rebecca M. White, J.D., CPCU

Risk Management Director of Operations

Agency of Administration, Financial Services Division

Office of Risk Management

109 State Street, 3rd Floor

Montpelier, VT 05609-3100

Phone: (802) 793-5347

Email: Rebecca.white@vermont.gov

Website: <https://aoa.vermont.gov/secretary/divisions/workers-comp>

It's time to "button up" your homes for winter and the State of Vermont and the Button Up Vermont campaign have many resources to help. To help prepare for and get through the home heating season, you can find information, financial resources, tips and more at vermont.gov/ButtonUpVT.

Updated (bivalent) COVID boosters and flu shots are now available! Stay up to date on your vaccines by contacting your pharmacy, doctor's office or visiting healthvermont.gov/MyVaccine for walk-in opportunities.

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From: Kerry Mangold <kmangold@wellpath.us>

Sent: Friday, March 31, 2023 1:39 PM

To: Titus, Max (they/them) <Max.Titus@vermont.gov>; White, Rebecca M <Rebecca.White@vermont.gov>

Cc: LaPlant, Tatum <Tatum.LaPlant@vermont.gov>; Brett Arnold <BWArnold@Wellpath.us>

Subject: Re: Insurance addition to Attachment D - Modification to Customary Provisions

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Confirming, we our good from our end.

Kerry

From: Titus, Max (they/them) <Max.Titus@vermont.gov>

Sent: Friday, March 31, 2023 12:52 PM

To: White, Rebecca M <Rebecca.White@vermont.gov>; Kerry Mangold <kmangold@wellpath.us>

Cc: LaPlant, Tatum <Tatum.LaPlant@vermont.gov>; Brett Arnold <BWArnold@Wellpath.us>; Titus, Max (they/them) <Max.Titus@vermont.gov>

Subject: [EXT] RE: Insurance addition to Attachment D - Modification to Customary Provisions

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Thanks, all. So just to confirm, I will update the Statement in Attachment D – Modifications of Customary Provisions to match what was discussed in this thread. The language will read:

Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement including coverage for sexual assault and molestation, with minimum coverage of \$3,000,000.00 per occurrence, and \$6,000,000.00 aggregate.

All agree?

TY,

Max Titus, MLS, CHC

Pronouns: they/them/theirs

Director of Health Services

ADA Compliance Director

Vermont Department of Corrections

NOB 2 South

280 State Drive

Waterbury, VT 05671-2000
Cell (802) 917-1009
max.titus@vermont.gov

From: White, Rebecca M <Rebecca.White@vermont.gov>
Sent: Friday, March 31, 2023 12:33 PM
To: Kerry Mangold <kmangold@wellpath.us>; Titus, Max (they/them) <Max.Titus@vermont.gov>
Cc: LaPlant, Tatum <Tatum.LaPlant@vermont.gov>; Brett Arnold <BWArnold@Wellpath.us>
Subject: RE: Insurance addition to Attachment D - Modification to Customary Provisions

Thanks Kerry. Sounds good.

Rebecca M. White, J.D., CPCU

Risk Management Director of Operations

Agency of Administration, Financial Services Division

Office of Risk Management

109 State Street, 3rd Floor

Montpelier, VT 05609-3100

Phone: (802) 793-5347

Email: Rebecca.white@vermont.gov

Website: <https://aoa.vermont.gov/secretary/divisions/workers-comp>

It's time to "button up" your homes for winter and the State of Vermont and the Button Up Vermont campaign have many resources to help. To help prepare for and get through the home heating season, you can find information, financial resources, tips and more at vermont.gov/ButtonUpVT.

Updated (bivalent) COVID boosters and flu shots are now available! Stay up to date on your vaccines by contacting your pharmacy, doctor's office or visiting healthvermont.gov/MyVaccine for walk-in opportunities.

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From: Kerry Mangold <kmangold@wellpath.us>
Sent: Friday, March 31, 2023 12:28 PM
To: White, Rebecca M <Rebecca.White@vermont.gov>; Titus, Max (they/them) <Max.Titus@vermont.gov>
Cc: LaPlant, Tatum <Tatum.LaPlant@vermont.gov>; Brett Arnold <BWArnold@Wellpath.us>
Subject: RE: Insurance addition to Attachment D - Modification to Customary Provisions

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The SAAM limit would be the same as the medical professional liability limit of \$3M per claim and \$6M in aggregate. Since the SAAM coverage is part of the PL program, there is no separate limit or sublimit.

From: White, Rebecca M <Rebecca.White@vermont.gov>
Sent: Friday, March 31, 2023 11:55 AM
To: Kerry Mangold <kmangold@wellpath.us>; Titus, Max (they/them) <Max.Titus@vermont.gov>
Cc: LaPlant, Tatum <Tatum.LaPlant@vermont.gov>; Brett Arnold <BWArnold@Wellpath.us>
Subject: [EXT] Re: Insurance addition to Attachment D - Modification to Customary Provisions

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What is the SAAM limit?

Rebecca White

From: Kerry Mangold <kmangold@wellpath.us>
Sent: Friday, March 31, 2023 11:50:46 AM
To: White, Rebecca M <Rebecca.White@vermont.gov>; Titus, Max (they/them) <Max.Titus@vermont.gov>
Cc: LaPlant, Tatum <Tatum.LaPlant@vermont.gov>; Brett Arnold <BWArnold@Wellpath.us>
Subject: RE: Insurance addition to Attachment D - Modification to Customary Provisions

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Our coverage does not have a SAAM sublimit.

Kerry

From: White, Rebecca M <Rebecca.White@vermont.gov>
Sent: Friday, March 31, 2023 7:39 AM
To: Titus, Max (they/them) <Max.Titus@vermont.gov>; Kerry Mangold <kmangold@wellpath.us>

Cc: LaPlant, Tatum <Tatum.LaPlant@vermont.gov>; Brett Arnold <BWArnold@Wellpath.us>
Subject: [EXT] RE: Insurance addition to Attachment D - Modification to Customary Provisions

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Good morning,

If the SAAM coverage is included in the PL/GL coverage then the language is fine. What is the SAAM sublimit?

Rebecca M. White, J.D., CPCU

Risk Management Director of Operations

Agency of Administration, Financial Services Division

Office of Risk Management

109 State Street, 3rd Floor

Montpelier, VT 05609-3100

Phone: (802) 793-5347

Email: Rebecca.white@vermont.gov

Website: <https://aoa.vermont.gov/secretary/divisions/workers-comp>

It's time to "button up" your homes for winter and the State of Vermont and the Button Up Vermont campaign have many resources to help. To help prepare for and get through the home heating season, you can find information, financial resources, tips and more at vermont.gov/ButtonUpVT.

Updated (bivalent) COVID boosters and flu shots are now available! Stay up to date on your vaccines by contacting your pharmacy, doctor's office or visiting healthvermont.gov/MyVaccine for walk-in opportunities.

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From: Titus, Max (they/them) <Max.Titus@vermont.gov>

Sent: Friday, March 31, 2023 7:32 AM

To: Kerry Mangold <kmangold@wellpath.us>

Cc: LaPlant, Tatum <Tatum.LaPlant@vermont.gov>; Brett Arnold <BWArnold@Wellpath.us>; White, Rebecca M <Rebecca.White@vermont.gov>; Titus, Max (they/them) <Max.Titus@vermont.gov>

Subject: RE: Insurance addition to Attachment D - Modification to Customary Provisions

Importance: High

Hi Kerry,

Thanks for having your team look into this so quickly. I'm adding Rebecca White directly to speed up the communication around this language. Rebecca – can you look at Wellpath's response below and advise if the suggested modification would be acceptable?

I am happy to arrange a meeting or call if that would be the fastest way to resolve.

TY,

Max Titus, MLS, CHC

[Pronouns:](#) they/them/theirs

Director of Health Services

ADA Compliance Director

Vermont Department of Corrections

NOB 2 South

280 State Drive

Waterbury, VT 05671-2000

Cell (802) 917-1009

max.titus@vermont.gov

From: Kerry Mangold <kmangold@wellpath.us>

Sent: Thursday, March 30, 2023 6:45 PM

To: Titus, Max (they/them) <Max.Titus@vermont.gov>

Cc: LaPlant, Tatum <Tatum.LaPlant@vermont.gov>; Brett Arnold <BWArnold@Wellpath.us>

Subject: RE: Insurance addition to Attachment D - Modification to Customary Provisions

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Thanks Max! Legal has reviewed on our end and has advised this language is not agreeable. They have stated that sexual abuse and molestation coverage is not a standalone coverage and is included as part of our standard PL/GL coverage. Is it possible that we just add "including sexual abuse and molestation" to the end of the PL/GL language in this section as opposed to adding the below statement?

Thanks,
Kerry

From: Titus, Max (they/them) <Max.Titus@vermont.gov>
Sent: Thursday, March 30, 2023 3:52 PM
To: Kerry Mangold <kmangold@wellpath.us>
Cc: LaPlant, Tatum <Tatum.LaPlant@vermont.gov>; Titus, Max (they/them) <Max.Titus@vermont.gov>
Subject: [EXT] Insurance addition to Attachment D - Modification to Customary Provisions
Importance: High

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Hi there,

Per our discussion, upon Risk Management review, we were asked to include the following statement in Attachment D – Modifications to the Customary Provisions:

“Sexual Abuse and Molestation coverage for any and all services performed under this contract, with minimum coverage of \$1,000,000 per claim, \$3,000,000 aggregate.”

I’m told this is a new requirement which is why it was not included in the Attachment D we have been using.

Please review ASAP and let us know if you have any questions. I’ve included Tatum from DOC’s Business Office who can connect you to the Risk Management folks if needed.

TY!

Max Titus, MLS, CHC

[Pronouns:](#) they/them/theirs

Director of Health Services

ADA Compliance Director

Vermont Department of Corrections

NOB 2 South

280 State Drive

Waterbury, VT 05671-2000

Cell (802) 917-1009

max.titus@vermont.gov

STANDARD CONTRACT FOR SERVICES

1. **Parties.** This is a contract for services between the State of Vermont, Department of Corrections (hereinafter called “State” or “DOC”), and Wellpath LLC. with a principal place of business in Nashville, Tennessee, (hereinafter called “Contractor”). Contractor’s form of business organization is a Limited Liability Company (LLC). It is Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** The subject matter of this contract is services generally on the subject of comprehensive health services. Detailed services to be provided by Contractor are described in Attachment A.
3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$113,524,463.73.
4. **Contract Term.** The period of Contractor’s performance shall begin on July 1, 2023, and end on June 30, 2026. This contract may be extended for up to two, one-year periods at the State’s discretion.
5. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.
6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Contractor.
7. **Termination for Convenience.** This contract may be terminated by the State or the Contractor at any time by giving written notice at least one hundred and eighty (180) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.
8. **Primary Contacts.** The Parties will keep and maintain current at all times a primary point of contact for this Agreement, which are presently as follows:

a. For the Contractor:

Name: David Thompson

Phone: 615-466-3486

Email: DNThompson@Wellpath.us

b. For the State:

Name: Max Titus, Director of Health Services

Phone: 802-917-1009

Email: max.titus@vermont.gov

9. **Attachments.** This contract consists of **91** pages including the following attachments which are incorporated herein:

Attachment A - Statement of Work

Attachment B - Payment Provisions

Attachment C – “Standard State Provisions for Contracts and Grants” a preprinted form (revision date 12/15/2017)

Attachment D – Modifications to Customary Provisions

Attachment D – IT System Implementation

Attachment E – Business Associate Agreement

Attachment F - Agency of Human Services’ Customary Contract/Grant Provisions

Appendix 1 – Stipulations and Agreements

Appendix 2 – Mobility Codes

Appendix 3 – Treatment of Hepatitis C

Appendix 4 – Mental Health Unit HSD Procedure

Appendix 5 – Onboarding and Transition Requirements

Appendix 6 – Reporting Requirements

Appendix 7 – Staffing Matrix

Appendix 8 – Mental Health and Substance Use Workflow

Appendix 9 – Initial Intake Flow Diagram

Appendix 10 – MOU with VDH and DOC for HIV Testing

Appendix 11 – Emergency Psychotropic Medications

Appendix 12 – MAT Policy and Procedure

Appendix 13 – MAT Clinical Guidelines

Appendix 14 – Annual Budgeted Financials

Appendix 15 – Liquidated Damages Calculator

Appendix 16 – Payment Adjustments Invoice Calculator

Appendix 17 – Summary of P4P Metrics Current

Appendix 18 – Summary of P4P Metrics Future

Order of Precedence. Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

- (1) Standard Contract
- (2) Attachment D – Modifications to Customary Provisions
- (3) Attachment D – IT System Implementation
- (4) Attachment C – Standard Contract Provisions for Contracts and Grants
- (5) Attachment A – Statement of Work
- (6) Attachment B – Financial Provisions

- (7) Attachment E – Business Associate Agreement
- (8) Attachment F – Agency of Human Services’ Customary Contract/Grant Provisions
- (9) Appendix 1 – Stipulations and Agreements
- (10) Appendix 2 – Mobility Codes
- (11) Appendix 3 – Treatment of Hepatitis C
- (12) Appendix 4 – Mental Health Unit HSD Procedure
- (13) Appendix 5 – Onboarding and Transition Requirements
- (14) Appendix 6 – Reporting Requirements
- (15) Appendix 7 – Staffing Matrix
- (16) Appendix 8 – Mental Health and Substance Use Workflow
- (17) Appendix 9 – Initial Intake Flow Diagram
- (18) Appendix 10 – MOU with VDH and DOC for HIV Testing
- (19) Appendix 11 – Emergency Psychotropic Medications
- (20) Appendix 12 – MAT Policy and Procedure
- (21) Appendix 13 – MAT Clinical Guidelines
- (22) Appendix 14 – Annual Budgeted Financials
- (23) Appendix 15 – Liquidated Damages Calculator
- (24) Appendix 16 – Payment Adjustments Invoice Calculator
- (25) Appendix 17 – Summary of P4P Metrics Current
- (26) Appendix 18 – Summary of P4P Metrics Future

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont:

Date: 5/1/2023
DocuSigned by: _____

Signature: 
4F443707809C4FD...

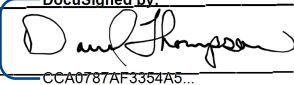
Name: Nicholas Deml

Title: Commissioner

Nicholas.Deml@vermont.gov

By the Contractor:

Date: 5/1/2023
DocuSigned by: _____

Signature: 
CCA0787AF3354A5...

Name: David Thompson

Title: SVP Operations

dnthompson@wellpath.us

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ATTACHMENT A – STATEMENT OF WORK

1 GENERAL REQUIREMENTS

1.1 Acknowledgments

1. The Contractor acknowledges that the DOC is responsible for ensuring healthcare is provided to incarcerated individuals. The DOC Health Services Division (HSD) oversees a comprehensive health services program that provides health services to incarcerated individuals as guaranteed by the 8th Amendment of the United States Constitution, required by [state law](#), and in compliance with the National Commission for Correctional Health Care (NCCHC) standards for ongoing accreditation.
2. The Contractor acknowledges that “Comprehensive health services,” as used or implied within this contract will, unless otherwise noted, mean an integrated, holistic system of care that includes but is not limited to medical, mental health, substance abuse, dental, vision, on-site and off-site specialty, pharmacy, care coordination, and emergency services. Comprehensive health services will be provided to incarcerated individuals housed at any Vermont DOC facility throughout the state.
3. The Contractor will be committed to working with all divisions within DOC as well as other [departments within Vermont’s Agency of Human Services \(AHS\)](#). In addition, the Contractor will be committed to working with community-based organizations including [Federally Qualified Health Centers \(FQHCs\)](#), [Vermont’s Opioid Use Disorder Treatment System “hubs and spokes,”](#) [Designated Agencies \(DAs\)](#), [Specialized Services Agencies \(SSAs\)](#), [Vermont Chronic Care Initiative \(VCCI\)](#), [Planned Parenthood of Northern New England \(PPNNE\)](#), [Prisoners’ Rights Office \(PRO\)](#), [Disability Rights Vermont \(DRVT\)](#), and [Vermont Information Technology Leaders \(VITL\)](#). The integration of services, and the ability of the Contractor to link patients to care across all points of transition, are core requirements of this contract.
4. The Contractor acknowledges that this contract is generated in consideration of the [Vision, Mission, Values, and Key Practices of AHS](#) and the [Vermont DOC](#), as well as the goals of [Vermont Act 48 of 2011](#). The Contractor will align the provision of comprehensive health services in DOC facilities to the extent possible with Act 48 and all other current and future health reform efforts implemented in Vermont.
5. The Contractor acknowledges that the DOC HSD has designed this contract to represent the desired state of the comprehensive health services program and that the care and services required by this contract do not represent the current state. Therefore, the Contractor will be required to submit a change management plan within the first six months of the contract to achieve the desired state. This contract incorporates the basic requirements of the NCCHC standards as well as Vermont specific standard of care and requirements. Where Vermont specific standard of care is higher than that of the NCCHC, it is noted in detail.

6. The Contractor acknowledges that the DOC HSD has created the framework of the desired state based on the current health systems as well as the future and desired health systems within the DOC and AHS. The DOC HSD will create and guide the implementation of health systems and the Contractor will provide the comprehensive health services necessary to carry out the DOC HSD's vision of the Comprehensive Health Services program. Any changes to the desired state resulting in a request to modify the expectations of the Contractor from those outlined in this contract will be subject to the terms of Section 15 of Attachment B.

1.2 General Requirements

1. The Contractor will:
 - a. Maintain NCCHC accreditation at all Vermont DOC facilities and provide services to incarcerated individuals in full compliance with the *Standards for Health Services in Prisons*, 2018 Edition, or any subsequent edition published by NCCHC. If the requirements listed in this contract represent a higher standard of care than that of NCCHC standards, the contract language will apply.
 - b. Comply with all current and future state and federal law, both restricted (which will be made available by DOC) and publicly available [DOC rules and policy documents](#), Memorandums of Understanding (MOUs), intergovernmental agreements, and stipulations (see Appendix 1 – Stipulations and Agreements), guidance documents, and AHS policies.
 - c. Adjust and modify the services that are provided to comply with updates or changes to DOC rules and policy documents, MOUs, intergovernmental agreements, laws, standards, or the operational needs of the DOC.
 - d. Act with integrity and transparency as a partner to the State.
 - e. Maintain complete, accurate, and detailed records of all services delivered.

2 CONTRACT MONITORING

2.1 DOC Quality Oversight and Performance Indicators

1. The DOC HSD is responsible for monitoring all aspects of care and services provided under this contract. To successfully fulfill these responsibilities, the DOC HSD will conduct regular and ad hoc chart reviews to verify and validate the delivery of services provided by the Contractor. These reviews may be scheduled in advance or may be unannounced. The DOC HSD also utilizes information and data from a variety of sources including:
 - a. Grievances and appeals
 - b. Electronic health record (EHR) reports and audits
 - c. Case reviews
 - d. Reports from DOC staff
 - e. Communication with community providers
 - f. Communication with advocate groups
 - g. Constituency services
2. The Contractor will generate reports as defined in 3.3.4 – Administrative Meetings and Reports and the Contractor will make available all other information relevant to the services

provided under this contract (e.g. detailed personnel records, attendance data, staff vacancy reports, clinical documentation, corporate quality improvement records, etc.) as requested by the DOC.

3. In addition, DOC contracts with a Health Services Monitor to provide third-party quality assurance functions. Audits and reviews by the Health Services Monitor will occur as requested by the DOC Health Services Director or designee. The Contractor will comply with all requests for information by the Health Services Monitor.
4. When deficiencies are identified, the Contractor will perform all remediation as requested by the State within a specified timeframe (see Section 2.2 Deficiencies and Contract Compliance).
5. Compliance with this section is subject to liquidated damages as outlined in Attachment B, Section 8a – Liquidated Damages.

2.2 Deficiencies and Contract Compliance

1. Deficiencies or contract compliance issues will be addressed through the Contract Monitoring and Improvement process which is a component of the Continuous Quality Improvement (CQI) Program. In response to the Health Services Director's request which will include documentation of the deficiency and the specific section of the contract where there is a deficiency or area of non-compliance, the Contractor will create a plan for improvement that includes but is not limited to:
 - a. A description of the deficiency or contract compliance issue
 - b. Any barriers to addressing the issue
 - c. A detailed list of actions that will occur to address the issue
 - d. A detailed list of the resources necessary to address the issue
 - e. A timeline for addressing the issue
 - f. Status of resolution
2. All elements of the plan must be documented clearly and approved by the DOC HSD.
3. Compliance with this section is subject to liquidated damages as outlined in Attachment B, Section 8a – Liquidated Damages.

3 SCOPE OF WORK

3.1 Vermont DOC Requirements

While NCCHC accreditation is required and at a minimum, the NCCHC standards must be met, this contract includes additional requirements with which the Contractor must comply. This section outlines Vermont specific requirements that are not included within the NCCHC framework. These requirements include state and federal law, DOC rules and policy documents, MOUs, intergovernmental agreements, settlement agreements and stipulations (see Appendix 1), and AHS policies.

3.1.1 Communication Between DOC HSD and the Contractor

1. The Contractor will maintain open communication with the DOC HSD to ensure contract compliance. Accordingly, the Contractor will:
 - a. Coordinate all activities with the DOC.
 - b. Communicate with management, at each correctional facility, all relevant information regarding a patient's physical and mental health needs that should be considered in determining security.
 - c. Cooperate with investigations by any State or federal agencies or law enforcement.
2. In addition, the Contractor's regional office staff will meet with the DOC at least weekly or as determined by the DOC Health Services Director to discuss health services or contract issues.
3. For all communication pathways, the DOC HSD will define how communication should occur to include:
 - a. The DOC staff to be included.
 - b. The method of communication.
 - c. The frequency of communication.
 - d. The threshold for receiving communication.
4. For email notifications, the Contractor must utilize an email and encryption platform which will allow the DOC to immediately forward the email to other parties and save in a format accessible to future DOC staff.
5. In addition, the Contractor will:
 - a. Notify the DOC Health Services Director or designee when patients are determined to need emergency transfer to an outside medical facility. The notification will adhere to the specifications of the DOC Health Services Director, and will include, at a minimum:
 - i. Patient's name
 - ii. Patient's date of birth
 - iii. A brief description of problem
 - iv. Vital signs (if taken)
 - v. Transfer location
 - b. Notify the DOC Health Services Director or designee when patients are returned to a

correctional facility from an outside medical facility. The notification will adhere to the specifications of the DOC Health Services Director and will include, at a minimum,

- i. Patient's name
 - ii. Patient's date of birth
 - iii. A brief summary of the patient's condition upon return.
 - iv. Transfer location
- c. Provide periodic updates from the outside medical facility commensurate with the patient status and level of care, and provide all updates to the DOC Health Services Director or designee.
- d. Notify the Facility Superintendent and DOC Health Services Director or designee of all unaccounted-for controlled substances or sharps immediately when discrepancy is identified.
- e. Provide a daily written report related to mental health and/or substance use to the DOC Health Services Director or designee which will include, at a minimum, the status of patients that:
 - i. Are awaiting voluntary or involuntary hospitalization placement
 - ii. Are acutely decompensating
 - iii. Are self-injurious
 - iv. Are on suicide watch
 - v. Are on involuntary med orders
 - vi. Are going to or returning from inpatient psychiatric hospitalization
 - vii. Are inducted on or tapered from Medication Assisted Treatment (MAT).
- f. Provide a weekly report to the DOC Health Services Director or designee which includes, at a minimum, a brief summary of patients located in special mental health housing units.
- g. Notify the DOC Health Services Director or designee of staff terminations to include:
 - i. Staff name
 - ii. Staff position and licensure, if applicable
 - iii. Date of termination
 - iv. Reason for termination
 - v. Status of any reports filed to regulatory or professional standard entities
- h. Provide weekly updates to a staff directory with any of the following:
 - i. New hire
 - ii. Termination
 - iii. Change of role
 - iv. If none of the above, the staff directory will be submitted monthly.
- i. Notify the DOC Health Services Director or designee of any possible or known privacy or security breaches as defined by the Health Insurance Portability and Accountability Act (HIPAA) or Vermont 42 CRF Part 2. Notification should occur as soon as possible but no later than 3 days after the issue is discovered.
- j. Notify the DOC Health Services Director or designee of any serious adverse events including:
 - i. Death of a patient
 - ii. Near death of a patient
 - iii. Attempted suicide or self-harm incident requiring additional care or monitoring
 - iv. Medication errors that reach the patient and require additional care or monitoring
 - v. Other events that reach the patient and require additional care or monitoring.

- k. Provide the DOC Health Services Director or designee with weekly reports indicating patients with pending or scheduled off-site appointments, including:
 - i. Patient name
 - ii. Patient date of birth
 - iii. Location of the appointment
 - iv. The anticipated length of the appointment
 - v. The reason for the appointment.
6. The Contractor will work collaboratively with the DOC and other stakeholders (e.g. other AHS departments or State Agencies, outside advocates, and community partners) as determined appropriate by the DOC Director of Health Services or designee to assess the current state of health services, update or develop health services programs, and improve the health and well-being of patients at Vermont's correctional facilities.
7. The Contractor will provide a secure client portal ("Wellpath Client Portal") that facilitates information sharing and communication between the DOC HSD and the Contractor and provides reporting on care statistics such as intake screenings completed, staffing hours provided, and compliance with contractual requirements.
8. Compliance with this section is subject to liquidated damages as outlined in Attachment B, Section 8a – Liquidated Damages.

3.1.2 Human Resources Requirements

1. The Contractor will:
 - a. Utilize recruitment strategies that are, at a minimum, consistent with industry standards with the understanding that Vermont is a rural state with limited access to health care professionals.
 - b. Submit all candidates for Health Service Administrator and all regional office positions to the DOC Health Services Director for approval before making an offer or hiring the candidate.
 - c. Perform criminal history checks prior to employment, and every five years thereafter on all staff. These criminal history checks will include:
 - i. State abuse registry checks
 - ii. Fingerprint-supported background check
 - iii. State and national criminal history checks
 - d. Comply with all Federal Prison Rape Elimination Act (PREA) hiring and onboarding standards including 115.17, 115.21, 115.32, 115.35, 115.64, 115.81, and 115.82, 115.83.
 - e. Require that all employees maintain DOC security clearance as a condition of employment and inform staff that pending the results of any investigation, the DOC may suspend the employee's security clearance, effectively barring them from the facility. If an employee's clearance is suspended by DOC pending the outcome of an investigation, the Contractor will place the employee on administrative leave with pay, as determined appropriate and in accordance with DOC practice.
 - f. Comply with an independent investigator selected by the DOC to investigate human resource concerns as determined necessary by the DOC.

- g. Whenever necessary, report any security incidents, violations, sexual abuse or illegal activity to the Office of Professional Regulation as required by [Vermont law](#) (see [Mandatory Report of Disciplinary Action](#) and [Drug Diversion Reporting Form](#)).
 - h. Provide personnel information to include disciplinary and termination decisions to the DOC Health Services Director or designee, inclusive of professional complaints to the Office of Professional Regulation, allegations of misconduct, and any unsatisfactory review, peer review, or corrective action plan.
 - i. Notify the HSD of all employees terminated for cause and explain the reason for termination.
 - j. Require that all regional office staff are based in Vermont unless otherwise approved by the Health Services Director or designee.
 - k. Limit the amount of time that regional office staff backfill at the facilities. The focus of regional office roles will be on the supervision of staff, quality assurance/quality improvement activities, chart review, and providing consultation and technical assistance at the request of the DOC.
 - l. To the extent possible, avoid the regular use of agency, per diem, or traveler staff to fulfill the staffing requirements of the contract. The State acknowledges the difficulties of hiring in certain job categories, especially RNs, medical providers, and mental health professionals. The Contractor will utilize commercially reasonable means to maintain a staffing vacancy rate of less than 10 percent.
 - m. Develop an employee grievance and resolution process that provides the Contractor's staff with a confidential means to address work-related issues. The Contractor will provide to the DOC Health Services Director or designee all employee grievance information upon request.
 - n. Develop a mechanism for employees who voluntarily terminate to anonymously report information regarding the reason that they terminated employment with the Contractor. Staff will be informed of this mechanism at the time of their hire.
 - o. Develop a process for staff to become designated as a "Qualified Mental Health Professional" by the Commissioner of Department of Mental Health (DMH) as appropriate for the role.
2. Notwithstanding the above, the Contractor may subcontract services to third parties to fulfill staffing requirements.

3.1.3 Utilization Management

The Contractor must provide a Utilization Management process that balances access to and quality of care with cost effectiveness. The Contractor will provide to the DOC Health Services Director a clear and thorough description of the process that includes any necessary information (e.g. the role of all parties involved in the process, the timeframe for review, and for what services this process is required) for approval prior to its implementation in Vermont.

3.1.4 Contaminated Waste

The Contractor will be responsible for and may subcontract with a company authorized to provide for the disposal of all bio-hazardous and contaminated waste.

3.1.5 Contractor's Role in Out-of-State Transfers

1. The DOC maintains contracts for the provision of supplemental housing units outside of Vermont. The Contractor will:
 - a. Complete all portions of the medical and mental health review (using forms and protocols established by the DOC Health Services Director or designee) which precedes out-of-state transfer.
 - b. Review patient records to determine if a patient has any medical conditions which would exclude them from out-of-state transfer.
 - c. Provide continuity of care and care coordination for patients going to or returning from an out-of-state facility.
 - d. Provide patient health information to the receiving state/jurisdiction as required.
 - e. Complete the review and all necessary documentation within 10 business days of receiving the request.
 - f. Adhere to DOC rules and policy documents on:
 - i. out of state transfers;
 - ii. the out of state transfer interstate compact/Federal Bureau of Prisons;
 - iii. out of state selection, transfer, and supplemental facility placement; and
 - iv. out of state eligibility.
2. Compliance with this section is subject to liquidated damages as outlined in Attachment B, Section 8a – Liquidated Damages.

3.1.6 Services for Incapacitated Persons (INCAPs)

The Contractor will comply with the DOC policy on incapacitated persons.

3.1.7 Patients with a Serious Functional Impairment (SFI) or with Serious Mental Illness (SMI)

1. To provide continuity of care for patients currently or historically [designated as SFI or with SMI](#), the Contractor will:
 - a. For patients clinically designated as SFI during a previous incarceration, determine within 30 days if the patient should be re-designated as SFI. For patients previously designated as SFI, there is no predetermination in advance of meeting the criteria.
 - b. Coordinate all intake and discharge planning with appropriate agencies, including the DMH, DAs, SSAs, the Vermont Department of Health (VDH), Division Of Alcohol & Drug Abuse Programs (ADAP), and Department of Aging and Independent Living (DAIL).
 - c. Require mental health professionals perform ongoing assessments of patients' mental health and functional status when there is a concern that a patient's condition cannot be treated within the DOC setting and a referral for hospital level of care may be appropriate.
 - d. Process all referrals for hospital-level care through the appropriate channels, including

- the processes for “Emergency Evaluation” or voluntary admissions per [Vermont Act 78](#), “An Act Relating to Offenders with Mental Illness, Inmate Records, and Inmate Services” and related [“Memorandum of Understanding \(MOU\) between VDH and Vermont DOC”](#).
- e. Provide that any patient determined to be “a person in need of treatment” pursuant to [18 V.S.A. §7504](#) is seen by a qualified mental health professional (QMHP), as defined by NCCHC, twice daily unless clinically contraindicated while waiting for hospitalization.
 - f. Provide that all SFI patients have an Individualized Treatment Plan to address their functional impairment.
2. In accordance with Sec.1. [28 V.S.A. § 701\(a\)](#) subdivisions 1, 2 and 3, and the DOC rule on the [classification, treatment, and use of administrative and disciplinary segregation for incarcerated individuals with a serious functional impairment](#), for patients that are in segregation, the Contractor will:
 - a. Utilize mental health staff to perform self-harm watch and mental health evaluations on patients designated as SFI at least three times per week.
 - b. Utilize QMHPs (as defined by NCCHC) to conduct periodic re-evaluation as required by statute.
 - c. Document all checks and encounters in the patient’s EHR, to include at least:
 - v. The results and clinical impressions of a brief mental status exam.
 - vi. Any observable elements of mental status.
 - vii. Other observations (including those provided by DOC security staff) of the patient’s recent behavior such as social functioning, personal hygiene, and activities of daily living (ADL).
 - viii. Administration of the Columbia Suicide Severity Rating Scale.
 - ix. Indications that the patient is decompensating and may require a higher level of care (i.e., inpatient psychiatric hospitalization).
 - x. The development of Individual Treatment Plans that are relevant to the patient’s conditions.
 - d. Ensure a QMHP assesses all patients with a SFI or SMI for contraindications prior to placement in disciplinary or administrative segregation.
 - e. Provide alternatives to segregation when contraindications exist.
 - f. Have a physician review and approve/deny administrative or disciplinary segregation placement based on medical judgement for any patient with a SFI or SMI. A physician must review all disciplinary segregation placements regarding a patient with a SFI or SMI prior to placement. A SFI or SMI patient cannot be placed in disciplinary segregation without the approval of a physician.
 - g. Ensure a QMHP determines if the behavior for which the patient received the disciplinary report proximately results from a SFI or SMI. The QMHP will inform and recommend options for disposition to the Hearing Officer (DOC staff).
 - h. Ensure a Facility Psychiatrist or Advance Practice Nurse is available to the Hearing Officer during due process hearings when involving a patient with SFI or SMI.
 - i. Patients with a SFI or SMI will receive daily visits from Qualified Health Care Professionals (QHCPs) or QMHPs to assess their status and initiate/refer for any needed changes in the treatment regimen. These assessments will document physical observations, the patient’s affect, any suicidal or self-harming ideation, and health

complaints. The needs of patients who are experiencing a current, severe psychiatric crisis, including acute psychosis and suicidal depression, will be addressed promptly, consistent with the patient's willingness to accept treatment. Alternative placements, consistent with their security, health and mental health needs, will be considered.

3.1.8 Multidisciplinary Case Planning

The Contractor's QHCPs, including QMHPs, will cooperate with casework and security staff in the development of case plans for sentenced patients. QHCPs will advise whether the patient will require accommodations (including accommodations through the Americans with Disabilities Act (ADA)) to successfully complete mandated intervention services prior to re-entering the community, pursuant to conviction status and risk assessment. As necessary, the QMHP will order further assessments to determine what additional accommodations may be required. These case planning activities are in addition to the otherwise required discharge planning.

3.1.9 Health Services Network:

1. The Contractor will:
 - a. Ensure that the following requirements are met with the installation and maintenance of their Network within the DOC facilities:
 - i. All persons who enter Vermont Correctional Facilities must first pass a background check as required. Refer to Section 3.1.2 for more information.
 - ii. The Contractor must support their own software. Technical support must be provided 24 hours a day, seven days a week and 365 days a year by the Contractor.
 - iii. The Contractor will provide, support, and maintain any software, hardware, interfaces, and communications infrastructure required to operate. The Contractor must provide their own Internet connectivity, e-mail, and account management.
 - b. Provide a single point-of-contact for any service outage or remedial maintenance issue that may arise 24 hours a day, seven days a week, and 365 days a year. This will include:
 - i. A 24-hour, toll-free service number.
 - ii. A live customer service representative must be available at all times for service calls.
 - iii. All service requests must result in an immediate trouble ticket generation with severity level assignment.
 - iv. Trouble tickets must track all activities related to the service call, including resolution time and method.
 - c. Have a Network with:
 - i. 24/7 availability.
 - ii. A 99.9% uptime including all scheduled and unanticipated updates. This uptime excludes any time the ISP is down.
 - iii. The ability to handle 100+ concurrent users for their staff operations within the DOC facilities.
 - d. Provide on-site repair time, method, and level of services for all locations. The Contractor will have the ability to handle emergencies and an escalation plan.

- e. Have an automated tracking system for problem requests as they are opened, updated, and closed by the field technicians, providing detail to show the problem and final resolution of said problem.
- f. Provide the State with a complete list of business, cellular, and pager numbers for its staff/subcontractors, managers, administrators, technicians, etc. including the Contractor's management home and emergency telephone numbers.
- g. Provide a copy of the Contractor's current repair procedure policy for both normal maintenance and emergency outages as it relates to this contract.
- h. Have the ability to remotely diagnose and repair the systems covered in this contract. Repair technicians must have remote access to all system controls via a secured Wide Area Network (WAN) or modem connection supplied by the Contractor at no cost to the State.
- i. Provide system software that will provide continuous self-test diagnostics without State personnel intervention. When the system detects a problem, alarms indicating system malfunctions and network problems will be sent to the Contractor. The system software will include remote diagnostic programs to indicate the operational status of critical system components.
- j. Provide all equipment, software, and infrastructure necessary to provide the services required in this contract.
- k. Request access to the Offender Management System (OMS), EHR, and other State systems through the established process. The State will manage and grant access to all State systems.
- l. Be responsible for all equipment, software, and infrastructure including Contractor network and connectivity in its entirety or its individual components including, but not limited to, normal wear/use, patient abuse, natural disaster, or patient unrest. System or component replacement will be performed at no cost to the State and will be initiated immediately upon notification to the Contractor of the system problem by the Location or State designee.
- m. Provide any and all equipment in areas accessed by patients that will be sturdy, vandal resistant, and composed of durable, tamper-free equipment suitable for a detention environment.
- n. Provide solution hardware that must be of detention grade quality; tamperproof user end equipment is required; a minimum of moving, removable, metallic parts, or any object which could be used as or fashioned into an offensive item, must not be present at the user end, if applicable.
- o. Ensure that all equipment providing input will have a tamperproof functionless keyboard with internal track balls and industry standard shatterproof monitor, if applicable.
- p. Be responsible for all cables and power cords which must be secured.
- q. Provide equipment that is compliant with ADA guidelines.
- r. Provide all components of their System and Network including hardware, software, networking, infrastructure, storage, archiving, etc. including physical size and descriptions of all equipment/hardware. The Contractor will maintain and support all components including version upgrades, patches, hardware upgrades, and replacement plan, network connectivity, backups, retention strategy, disaster recovery, redundancy, and change management.

- s. Provide any environmental conditions required for the System and Network. The Contractor will include any air conditioning or heating requirements for equipment provided. The Contractor is required to supply the necessary heating or cooling system.
- t. For each location installation, provide an implementation plan which includes an installation schedule. The plan, including quantities of equipment, must be approved by the State before initiation and any updates or changes to this plan must be submitted to and approved by the State. Please note that any and all installations must be accomplished during normal business hours at each location or as directed by the location's onsite Superintendent. For additional information regarding transition planning see Section 3.2 – Contractor Transition and Onboarding Requirements.
- u. Adhere to all applicable State, Agency, and Departmental IT policies and procedures regarding information protection and security.
- v. Obtain the State's written permission before proceeding with any work that requires cutting into or through girders, beams, concrete or tile floors, partitions or ceilings, or any work that may impair fireproofing or moisture proofing, or potentially cause and structural damage.
- w. Understand that the use of existing or in-place conduit, raceways, cable ways, cable, inside wiring, telephone set mountings, switches, terminal boxes, and terminals within the location are at the risk of the Contractor. No exposed wiring will be permitted. Ownership of any wiring or conduit placed under this Contract by the Contractor becomes the State's property upon termination and/or expiration of the Contract.
- x. Agree that, should any cabling work be required as part of any installation, all new cable will be used and marked clearly and legibly at both ends, and must meet all applicable Electronic Industries Alliance (EIA) and Telecommunications Industry Association (TIA) wiring standards for commercial buildings. All new cabling required by the Contractor will be installed by the Contractor at no cost to the State.
- y. Restore to original condition, at its own cost, any damage to the State's property caused by maintenance, installation, or removal by personnel associated with the Contractor including, but not limited to, repairs to walls and ceilings.
- z. Clean up and remove all debris and packaging material resulting from work performed.
- aa. Provide and install adequate surge and lightning protection equipment on all equipment used robust enough in order to support the Contractor provided system/equipment for 30 minutes in the event of a power outage. This will include an uninterruptable power supply (UPS) for the switch, if required. UPS units must be adequate for the size of each location. Adequacy must be documented based on UPS manufacturer's recommendations. The Contractor will provide, install, and maintain (according to manufacturer's specification) all UPS equipment at each of the locations. The Contractor will replace all UPS equipment upon expiration of the manufacturer's life cycle of the installed product. The use of traditional "power strips" for surge protection is not acceptable.
- bb. Upon completion of initial installation and ongoing installations, provide the State with a list of identifying information for all equipment including, but not limited to, serial numbers, make/model, telephone numbers, and locations of each unit.
- cc. Provide details on auditing capabilities/report within each identified System and Network.

3.1.10 Offender Management System (OMS)

1. The Contractor will enter information into the DOC's OMS as determined appropriate by the DOC Health Services Director or designee. This information will include at a minimum:
 - a. The appropriate mobility code (see Appendix 2 – Mobility Codes) so that patients for whom transfer is contraindicated are not transferred without approval of appropriate health services staff.
 - b. Information about patients with special needs such as SFI/SMI, individuals on the MAT program including type of medication, special passes such as a bottom bunk or bottom tier.
 - c. Appropriate Alerts, defined by the DOC Health Services Director or designee.
 - d. Other information at the request of the DOC Health Services Director or designee.

3.1.11 Breaking Free and other Technology Assisted Care (TAC)

1. The Contractor will provide funding for Breaking Free through the existing contractual agreement with DOC's telecommunications vendor, ViaPath.
2. The Contractor will also develop an agreement with Voi, Inc. for use of Systematic Expert Risk Assessment for Suicide (SERAS).
3. The Contractor will work collaboratively with the DOC and outside vendors to implement and arrange funding for additional TAC as determined appropriate by the DOC Health Services Director or designee and mutually agreed upon by the DOC and Contractor.

3.1.12 Americans with Disabilities Act (ADA)

1. The Contractor will:
 - a. Comply with DOC Administrative Directive #371.01 *Americans with Disabilities Act* and Interim Memo.
 - b. Comply with DOC Administrative Directive #316 *Effective Communication*.
 - c. Comply with any settlement agreements.
 - d. Defer to the DOC's ADA Compliance Director in the event that the Contractor and the DOC disagree on an ADA related issue.
 - e. Provide, maintain, and support a pager system as requested by the DOC Director of Health Services or designee that meets the needs of Deaf, Hard of Hearing, DeafBlind (blind or low vision), DeafPlus, DeafDisabled patients at each site. This system would be located and maintained on the Contractor's network.
 - f. Provide prosthetics and other assistive devices that improve patient's level of functioning to that of a non-disabled patient. All prosthetics and other medical devices must meet all applicable quality standards and DOC security requirements.
 - g. Establish contracts or agreements with local prosthetic and assistive device companies to provide prosthetic and assistive devices to patients as determined necessary by the Contractor or the ADA Compliance Director or designee.
 - h. Request that the company representative make preliminary measurements and fittings on-site whenever possible.

- i. Communicate with the DOC the timeline for providing prosthetic and assistive devices or other assessments and services, to allow the DOC to provide other accommodations in the meantime at the DOC's cost.

3.1.13 Act 153

The Contractor will comply with [Vermont Act 153 of 2018](#), "An act relating to inmate access to prescription drugs."

3.1.14 Optical Services

1. The Contractor will:
 - a. When a visual deficiency beyond 20/40 is identified, refer the patient to the Contractor's optical service provider.
 - b. Consult with the Vermont Division of the Blind and Visually Impaired for all patients who are identified by the optical service provider as needing supplemental expert services. Any consultation with the Vermont Division of the Blind and Visually Impaired will trigger an ADA accommodation request pursuant to the DOC policy on the Americans with Disabilities Act.
 - c. Pay for the dispensing, evaluation, and fitting services of an optometrist.
 - d. Provide all monocular patients with a referral to the optometrist for a discussion of vision preservation without regard for visual acuity by Snellen testing.
 - e. Provide eyeglasses to patients as prescribed and deemed necessary by the optometrist.
 - f. Provide all eligible patients follow-up eye exams every two years.

3.1.15 Treatment for Patients with Gender Dysphoria

1. The Contractor will:
 - a. Use Vermont Medicaid guidelines as a framework for providing gender affirming care.
 - b. Refer to the [AHS Administrative Rule 4.238, "Gender Affirmation Surgery for the Treatment of Gender Dysphoria,"](#) for guidance on surgical care for individuals with gender dysphoria.
 - c. Employ or subcontract with DOC approved qualified health care providers that are subject matter experts in care for this population.
2. There will be no additional barriers or review processes required for access to gender affirming care.

3.1.16 Treatment for Patients with Hepatitis C

The Contractor will provide Hepatitis C (HCV) treatment in accordance with Appendix 3 – Treatment of Hepatitis C. Any updates to the policy or protocol must be approved by the DOC Health Services Director or designee.

3.1.17 Mental Health Units

The Contractor will provide services necessary to comply with [Vermont Act 78 of 2017](#), “An Act Relating to Offenders with Mental Illness, Inmate Records, and Inmate Services,” related MOUs. See Appendix 4 - [Health Services Procedure: Mental Health Units](#).

3.2 Contract Transition and Onboarding Requirements

3.2.1 Transition Plan

1. The Contractor will provide a comprehensive transition plan that addresses all aspects of the contract transition to include:
 - a. Contract deliverables related to the contract transition
 - b. Action items
 - c. Person(s) responsible for each item
 - d. Start date for each item
 - e. Target completion date for each item
 - f. Status of each item
 - g. Completion date of each item
2. The DOC Health Services Director and the Contractor’s project manager (PM) will agree on the exact format and contents of the transition plan at or before the initial transition begins. The transition plan will include, at a minimum, the items listed in Appendix 5 – Onboarding and Transition Requirements.
3. Compliance with this section is subject to liquidated damages as outlined in Attachment B, Section 8a – Liquidated Damages.

3.2.2 Project Manager

1. The Contractor will assign a PM to oversee the contract transition. The PM will:
 - a. Be responsible to the DOC for all aspects of the transition.
 - b. Be located in Vermont for the duration of the contract transition.
 - c. Coordinate all the tasks necessary to successfully transition the contract. These tasks will include but not be limited to:
 - i. Assigning staff, scheduling meetings, reviewing status reports, addressing project issues and change orders, and preparing presentations for State stakeholders.
 - d. Have daily contact with the DOC Health Services Director and/or designees in a manner approved by the DOC Health Services Director.
 - e. Provide written “Weekly Status Reports” to the DOC Health Services Director. “Weekly Status Reports” will include, at a minimum:
 - i. All tasks accomplished, incomplete, or behind schedule in the previous week (with reasons given for those tasks behind schedule and plans for completion).
 - ii. All tasks planned for the coming two weeks.
 - iii. An updated status of all tasks (entered into the transition plan and attached to the status report).
 - iv. The status of any corrective actions.

- v. Notice to the State, as soon as the Contractor is aware, if required deliverables will not be completed on time.
 - f. At the discretion of the DOC Health Services Director, schedule and facilitate project team meetings, either in person or via video conference. These meetings may include status updates of all aspects of the transition.
2. The PM will have overall authority and responsibility for the contract deliverables, schedule, and successful implementation of the Contractor's resources to fulfill the requirements of the contract related to the contract transition.
3. Compliance with this section is subject to liquidated damages as outlined in Attachment B, Section 8a – Liquidated Damages.

3.2.3 Transition of Contractor Staff

1. The Contractor will:
 - a. Make every effort to minimize the impact of the contract transition on contractor staff and on the operation of the DOC's health services program.
 - b. Interview and review all staff currently employed by the DOC's Contractor, including those in the Contractor's regional office. All employees, if eligible, will have the right of first refusal for positions with the future Contractor, pursuant to the staffing requirements set forth in the final contract.
 - c. Propose all staff, new or incumbent, to the DOC Health Services Director or designee(s) for approval. The DOC reserves the right to approve or deny all proposed staff during the contract transition.
 - d. The DOC Health Services Director will review the employment of all incumbent and future employees of the Contractor's regional office and determine approval for employment.
 - e. Verify that all personnel are licensed, certified, and/or registered, as necessary, in conformance with Vermont laws and regulatory requirements.
 - f. Require that all staff, new and incumbent, are subject to the DOC's staff onboarding requirements, including background checks, fingerprinting requirements, and the Federal PREA standard requirements.
2. Staff retained from the previous contract will not receive lower hourly wages, salaries, or benefits than earned prior to the start of the new contract. Considerations will be made on a case-by-case basis for situations where the current hourly wage, salary, or benefits are outside of the market value. In addition, it is understood that benefit packages may vary but generally should include market standard benefits. Retained staff will maintain their pre-existing hire date for the purposes of evaluations, merit increases, and calculations of vacation, sick, annual, or other leave accruals. Retained staff will not be subject to waiting periods for health insurance, 401(k) plans, employee stock options (if available), or any other benefits. Fringe benefits for existing staff will be comparable to those earned leading up to the contract transition and will begin immediately.

3. The Contractor will adjust schedules and staffing patterns as needed, according to staffing workloads, DOC operational needs, the needs of the patient population, and settlement agreements. Staffing levels may also be adjusted based on the results of quality assurance activities.

3.2.4 Transition of Network

1. The Contractor will:
 - a. Work with the State and any incumbent vendor to ensure an orderly transition of services and responsibilities under the Contract and to ensure the continuity of the services required by the State.
 - b. Provide a transition plan that minimizes service downtime and lost revenue to the State for a smooth “cutover” to the new equipment and/or network. The plan must include a list of all workstation and network equipment to be upgraded and maintained, as well as the timeline for implementation and replacement, and be approved by the Health Services Director or designee before implementation.
 - c. Ensure that all contractor staff have the workstation and peripheral equipment needed to perform the duties necessary as outlined in this agreement.
 - d. Provide an updated list of equipment to the DOC Health Services Director or designee at least quarterly.
 - e. Upon expiration, termination, or cancellation of the Contract, cooperate in an orderly transfer of responsibility and/or the continuity of the services required under the terms of the Contract to an organization designated by the State.
 - f. Remove its equipment at the conclusion of the Contract in a manner that will allow the reuse of network cabling and fiber.
 - g. Agree the workstations and associated infrastructure will become the property of the State at the expiration, cancellation, or termination of this Contract.
 - h. Discontinue providing service or accepting new assignments under the terms of the Contract, on a date specified by the State.

3.3 Section A – Governance and Administration

3.3.1 Access to Care

The Contractor will, at a minimum, comply with NCCHC standard P-A-01.

3.3.2 Responsible Health Authority

The Contractor will, at a minimum, comply with NCCHC standard P-A-02.

3.3.3 Medical Autonomy

1. The Contractor will, at a minimum, comply with NCCHC standard P-A-03.
2. The Contractor will immediately report to the DOC Health Services Director or designee any instances in which clinical staff believe that their medical autonomy or clinical

recommendations are limited or jeopardized by custody or other non-clinical staff except when there is a direct threat to the safety and security of a facility or persons therein.

3.3.4 Administrative Meetings and Reports

1. The Contractor will, at a minimum, comply with NCCHC standard P-A-04.
2. The Contractor will also facilitate or participate, as determined by the State, the following meetings, to be held at a frequency defined by the State:
 - a. Pharmacy and Therapeutics (P&T) Committee
 - b. Medical Administrative Committee (MAC)/Continuous Quality Improvement (at each facility)
 - c. CQI Committee (see Section 3.3.6 – Continuous Quality Improvement Program)
 - d. EHR Committee
 - e. Mortality and Morbidity Reviews
 - f. Executive Business Meeting
 - g. Contract Monitoring and Improvement meetings (see section 2.2 – Deficiencies and Contract Compliance)
 - h. Incident debriefings
 - i. Daily DOC “Morning Meetings,” (or other venue as determined by the Superintendent).
The Contractor will be prepared to discuss:
 - i. Any patient with physical or mental health needs
 - ii. Any patient with, requesting, or in need of ADA accommodation
 - iii. Any patient with behavioral issues or concerns
 - iv. Any information pertinent to the health and safety of any person at the facility
 - j. Additional meetings at the discretion of the State
3. The Contractor will perform the following with regards to all administrative meetings it is required to facilitate under the Contract:
 - a. Invite and ensure attendance of all required participants, as determined by the State.
 - b. Compile meeting records and notes and distribute them to all required participants regardless of attendance.
 - c. For monthly and quarterly meetings:
 - i. Create an agenda to be submitted for DOC additions or edits no later than five business days prior to the meeting date.
 - ii. Compile and distribute all materials for consideration and discussion at the meeting no later than three business days prior to the meeting date. If relevant materials are unavailable or not yet available, they should be distributed as soon as practicable.
4. The Contractor will also:
 - a. Configure and provide reports to the State as requested. Refer to Appendix 6 – Reporting Requirements for a summary of all current reports. Templates for each report will be provided to Offerors upon request.
 - b. Produce all reports utilizing the State’s EHR and other electronic databases or systems (or provide a transition plan to get to this state of which the timeline will be approved by the State).

- c. Configure and batch all required reports related to patient care within the EHR.
 - d. Provide all reports in the format requested by the State.
 - e. Provide monthly and quarterly reports within 15 days of the close of the previous month or quarter unless otherwise approved by the DOC Health Services Director or designee.
5. The State reserves the right to request additional or different reporting information from the Contractor throughout the term of the contract, on either an *ad hoc* or regular basis. The Contractor will comply with the State's requests including any provided timelines; with both parties knowing that not all requests may be considered "reasonable", the parties will work together in good faith on timelines and the Contractor will provide documentation on why a certain request may not be able to be provided in the requested amount of time..
 6. The State reserves the right to request verification that State data stored and shared maintains compliance with all State and Federal laws. This includes email communications, SharePoint or other document repositories, or other methods of communication.
 7. The Contractor will also comply with Section 3.1.1 – Communication Between DOC HSD and the Contractor.
 8. Compliance with this section is subject to liquidated damages as outlined in Attachment B, Section 8a – Liquidated Damages.

3.3.5 Policies and Procedures

1. The Contractor will, at a minimum, comply with NCCHC standard P-A-05.
2. The Contractor will also have policies and procedures that comply with all Vermont specific requirements as outlined in Section 3.1 – Vermont DOC Requirements and throughout this document. The State must approve all Contractor policies and procedures before they are considered active and modifications to include the Vermont specific requirements will not cause delay in the process. In the absence of a State-approved policy or procedure on a specific matter, the DOC HSD will designate a policy or procedure with which the Contractor must comply.
3. Compliance with this section is subject to liquidated damages as outlined in Attachment B, Section 8a – Liquidated Damages.

3.3.6 Continuous Quality Improvement Program

1. The Contractor will, at a minimum, comply with NCCHC standard P-A-06.
2. The DOC Health Services Director or designee will approve a standardized format for the monthly Continuous Quality Improvement Program meetings and all attendees, and will be a partner in all Contractor CQI processes.
3. The Contractor will also comply with Section 2 – Contract Monitoring.

4. Compliance with this section is subject to liquidated damages as outlined in Attachment B, Section 8a – Liquidated Damages.

3.3.7 Privacy of Care

The Contractor will, at a minimum, comply with NCCHC standard P-A-07.

3.3.8 Health Records

1. The Contractor will, at a minimum, comply with NCCHC standard P-A-08.
2. In addition, the Contractor will utilize the EHR system provided by the DOC. The current EHR vendor for the Department of Corrections is CorrecTek, Inc. Should the DOC decide to modify or change EHR systems, the Contractor will cooperate with the DOC in all electronic system transition plans including any plans to update the EHR to meet the needs of the contract and achieve the desired state.
3. The Contractor will provide information on the Contractor staff role, job title, and access needs for the creation of a user's EHR account. The State will provide written approval, request for additional information, or denial through the method as determined by the State. All new users, user modifications, and user terminations to the EHR, need to be approved by DOC staff through methods determined by the State.

3.3.9 Procedures in the Event of a Patient Death

1. The Contractor will, at a minimum, comply with NCCHC standard P-A-09.
2. The Contractor will also comply with the DOC policy documents on death response and review and incident reporting, which outlines the roles of the DOC and the Contractor in the event of a death. Information regarding any and all deaths will be freely shared with the DOC including any Contractor incident reports, reviews, and findings. The Contractor will complete all remediation required by DOC or third-party review and comply with any CQI or Corrective Action Plan (CAP) process upon DOC request. The Mortality Review format must be approved the DOC Health Services Director or designee. All Mortality and Morbidity Reviews must be completed and provided to the DOC Health Services Director within 30 days of the event. This process is protected as part of the Peer Review Process and is privileged and confidential pursuant to 26 V.S.A. §§ 1441-1443, and is exempt from public disclosure.
3. Compliance with this section is subject to liquidated damages as outlined in Attachment B, Section 8a – Liquidated Damages.

3.3.10 Grievance Process for Health Care Complaints

1. The Contractor will, at a minimum, comply with NCCHC standard P-A-10.

2. The Contractor will also comply with the DOC policy on the grievance system..
3. Compliance with this section is subject to liquidated damages as outlined in Attachment B, Section 8a – Liquidated Damages.

3.4 Section B – Health Promotion, Safety, and Disease Prevention

3.4.1 Healthy Lifestyle (Education and) Promotion

1. The Contractor will, at a minimum, comply with NCCHC standard P-B-01.
2. Vermont’s correctional facilities are “tobacco free” for all patients and staff. The Contractor will (as applicable) provide patients with self-reported use of tobacco products with the following which will be approved by DOC in collaboration with VDH:
 - a. Information on the health impacts of continued use.
 - b. Group interventions and support programs, written materials, and individual education.
 - c. Nicotine replacement as approved by the DOC Health Services Director or designee and in accordance with DOC security requirements.
 - d. As part of release planning, information on community resources that can provide support with tobacco use cessation.

3.4.2 Infectious Disease Prevention and Control

1. The Contractor will, at a minimum, comply with NCCHC standard P-B-02.
2. The Contractor will also comply with any DOC protocols related to COVID-19.

3.4.3 Clinical Preventative Services

The Contractor will, at a minimum, comply with NCCHC standard P-B-03.

3.4.4 Medical Surveillance of Incarcerated Individual Workers

1. The Contractor will, at a minimum, comply with NCCHC standard P-B-04.
2. The Contractor will also:
 - a. Assess or review patients for work camp placement within 10 business days of receiving the request and provide weekly updates on the status of clearances.
 - b. Complete documentation for work clearances, which will include, at a minimum:
 - a. A statement that the patient’s health record was reviewed.
 - b. An indication that all pertinent medical history (e.g., communicable diseases, cardiac problems, pulmonary problems, allergies, and back problems) was reviewed.
 - c. Any current signs and symptoms of illness.
 - d. A brief, focused physical examination and vital signs.
 - e. Verification the patient has no medical conditions that preclude food service work

based on criteria provided by VDH.

- f. Documentation of assessment and/or screening for hepatitis A and B. The Contractor will offer testing for immunity to both. Where no immunity is present, the Contractor will (as clinically appropriate) offer the patient vaccination against both. Patients found with chronic, active hepatitis B will be referred to chronic disease clinic.

3.4.5 Suicide Prevention and Intervention

1. The Contractor will, at a minimum, comply with NCCHC standard P-B-05.
2. The Contractor will also comply with the [DOC's Suicide Taskforce's procedures](#).

3.4.6 Contraception

1. The Contractor will, at a minimum, comply with NCCHC standard P-B-06.
2. The Contractor will also comply with [Vermont Act 153 of 2018](#).

3.4.7 Communication on Patients' Health Needs

1. The Contractor will, at a minimum, comply with NCCHC standard P-B-07.
2. The Contractor will also participate in DOC Facility "morning meetings." The Contractor will be prepared to discuss patients with significant health or mental health needs, accommodations, and/or concerning behaviors with DOC staff during these meetings. For additional information refer to Section 3.1.1 – Communication Between DOC HSD and the Contractor, and Section 3.3.4 – Administrative Meetings and Reports.

3.4.8 Patient Safety

1. The Contractor will, at a minimum, comply with NCCHC standard P-B-08.
2. For addition information regarding patient safety and adverse events, see Section 2 – Contract Monitoring and Section 3.3.6 – Continuous Quality Improvement Program.

3.4.9 Staff Safety

The Contractor will, at a minimum, comply with NCCHC standard P-B-09.

3.5 Section C – Personnel and Training

3.5.1 Credentials (and Licensure)

1. The Contractor will, at a minimum, comply with NCCHC standard P-C-01.

2. The Contractor will also comply with all Vermont specific laws and requirements including those of the [Vermont Office of Professional Regulation](#) and the [Vermont Board of Medical Practice](#).
3. The Contractor will require all Mental Health Providers to be licensed or rostered in the State of Vermont and will include the term “psychotherapy” in the MHP job description.

3.5.2 Clinical Performance Enhancement

1. The Contractor will, at a minimum, comply with NCCHC standard P-C-02.
2. The Contractor will also:
 - a. Ensure that all clinical performance enhancement and/or peer reviews are conducted in a format approved by the DOC Health Services Director or designee.
 - b. Include performance indicators that align with the expectations of the contract.

3.5.3 Professional Development

1. The Contractor will, at a minimum, comply with NCCHC standard P-C-03.
2. The Contractor will also utilize industry standard methods of professional development including:
 - a. The development and use of Professional Development Plans (PDPs).
 - b. Utilizing a nationally recognized model for clinical supervision that is approved by the DOC Health Services Director or designee.

3.5.4 Health (and Mental Health) Training for Correctional Officers

1. The Contractor will, at a minimum, comply with NCCHC standard P-C-04.
2. The Contractor will also:
 - a. Provide special training to medical and corrections staff in accordance with the requirements set forth in [28 V.S.A §907](#).
 - b. Coordinate with the DOC HSD, and subsequently facility leadership, to develop the training schedule and content.

3.5.5 Medication Administration Training

The Contractor will, at a minimum, comply with NCCHC standard P-C-05.

3.5.6 Incarcerated Individual Workers

Not relevant in Vermont.

3.5.7 Staffing

1. The Contractor will, at a minimum, comply with NCCHC standard P-C-07.
2. The Contractor will also:
 - a. Employ medical, dental, mental health, substance abuse, and other professional staff sufficient in number and professional expertise to deliver a comprehensive health services program that meets the expectations of the contract (see Appendix 7 – Staffing Matrix).
 - b. Adjust work schedules and staffing patterns as needed, according to staffing workloads, DOC operational needs, the needs of the patient population, and settlement agreements. Staffing levels may also be adjusted based on the results of quality assurance activities.
 - c. Provide nursing staff on-site at each correctional facility, 24 hours per day, seven days per week, 365 days per year.
 - d. Staff the infirmary at Southern State Correctional Facility by census number and the acuity level of the population not to go below one Licensed Nursing Assistant (LNA) and one Registered Nurse (RN) on each shift.
 - e. Staff all other infirmaries by census number and the acuity level of the population.
 - f. Provide at least one RN on-site daily at each facility.
 - g. Provide at least one RN on-call for each facility on each shift when one is not on-site.
 - h. Require a physician is on call for each facility if not onsite.
 - i. Provide access to urgent and emergent on-call and on-site mental health services on a 24 hours a day, seven days a week, 365 days a year basis.
 - j. Provide on-site, in-person Vermont DMH certified QMHP's on first and second shift (6 a.m. through 9 p.m.) daily. On-call coverage with Vermont DMH certified QMHP's can provide coverage at other times. While on-call the Vermont DMH certified QMHP will, as needed, be either able to report to the correctional facility or evaluate the patient via tele-health within one hour of being called for services that include, but are not limited to:
 - i. Face-to-face encounters with patient.
 - ii. Assessments to determine if the patient requires a hospital level of care.
 - iii. Immediate notification to the DOC Health Services Director or designee of any patient that requires inpatient psychiatric hospitalization.
 - k. Employ or by contract provide the expertise of an addictionologist to oversee the medical practice and the quality assurance of the MAT program.
3. Compliance with this section is subject to liquidated damages as outlined in Attachment B, Section 8a – Liquidated Damages.

3.5.8 Healthcare Liaison

Not relevant in Vermont.

3.5.9 Orientation for Health Staff

1. The Contractor will, at a minimum, comply with NCCHC standard P-C-09.
2. The Contractor will also:
 - a. Provide training in other evidence-based intervention as defined by the DOC Health

Services Director or designee (e.g. motivational interviewing, cognitive behavioral therapy, “Risk, Need and Responsivity” concepts, specific, measurable, attainable, realistic, and time-limited (SMART) model for the development of Individualized Treatment Plans, and the standards for clinical documentation).

- b. Require that staff attend a local facility safety and security orientation. This orientation includes PREA Orientation required prior to unsupervised time with incarcerated individuals.
- c. Require that staff attend mandated trainings referenced in PREA Standards 115.31, 115.32, and 115.35.
- d. Require that all staff complete mandated reporter training prior to working with incarcerated individuals and are aware of their mandated reporting requirements under the [33 V.S.A. §4914](#) and [33 V.S.A. §§ 6902, 6903, 6904, 6908, 6909, 6913](#).

3.6 Section D – Ancillary Health Care Services

3.6.1 Pharmaceutical Operations

1. The Contractor will, at a minimum, comply with NCCHC standard P-D-01.
2. The Contractor will also:
 - a. Contract with one or more community (including hospital) pharmacies near each correctional facility which will serve as Back Up Pharmacies (BUPs). The Contractor will:
 - i. Utilize the BUPs for the purposes of providing timely access to essential medications for which no substitute is available within the stock supply. The pharmacy will provide a method for identifying medications that a patient may bring with them due to the nature of the drug (i.e., the medication cannot be immediately provided through stock of through the BUP).
 - ii. Direct staff to access the BUP as an occasional supplement to, not as substitution for, the Pharmaceutical Prime Vendor (PPV).
 - iii. Establish a protocol for the delivery of the pharmaceuticals from each BUP in a manner that does not utilize the Contractor's or State's employees. The State understands that extraordinary circumstances may occur where the use of the Contractor's or State's employees is unavoidable. The Contractor will inform the DOC Health Services Director or designee prior to utilizing Contractor or State employees to pick up and deliver pharmaceuticals from the BUP to DOC facilities.
 - b. Make pharmaceuticals available in the following manner:
 - i. Routine administration will occur within two hours of the time medication is scheduled to be administered.
 - ii. Stat/urgent medication administration will occur within one hour of the provider's order.
 - c. Participate in any required communication to any Federal or State regulatory agencies related to unaccounted discrepancies or loss of controlled substances.

3.6.2 Medication Services

1. The Contractor will, at a minimum, comply with NCCHC standard P-D-02.
2. The Contractor will also:
 - a. Comply with [Vermont Act 153 of 2018](#).
 - b. Establish a P&T Committee that will:
 - i. Be composed of Vermont physicians, other prescribers, pharmacists, nurses, administrators, quality improvement managers, and other health service staff that participate in the pharmaceutical operations. The DOC Health Services Director will approve the list of attendees and members of the DOC HSD will be included in all P&T meetings, discussions, and work.
 - ii. Establish a medication formulary that is as closely aligned with the Vermont Medicaid preferred drug list as possible.
 - iii. Establish a process for the review and approval of all non-formulary requests through the EHR by the Contractor's Statewide Medical Director.
 - iv. Maintain the list of "essential medications" to guide staff's decisions regarding medication ordering, interchange, substitution, and refusals.
 - v. Evaluate, educate, and advise medical staff and administrators in all matters that relate to the use of medications, including pertinent new medications and U.S. Food and Drug Administration (FDA) changes/black box warnings.
 - vi. Review physician prescribing utilization reports and refer any concerns to the CQI process.
3. All appropriate Contractor staff will have access to utilize the [Vermont Prescription Monitoring System \(VPMS\)](#) as described Vermont State statutes.

3.6.3 Clinic Space, Equipment, and Supplies

1. The Contractor will, at a minimum, comply with NCCHC standard P-D-03.
2. The Contractor will also:
 - a. Provide, maintain, and replace, as needed, all medical, mental health, substance abuse, dental, and office supplies and equipment (including computers and all other IT equipment per Section 3.1.9 – Health Services Network, continuous positive airway pressure (CPAP) machines, infirmary and special medical beds, wheelchairs) necessary to carry out the terms of the contract.
 - b. In collaboration with the DOC, continuously maintain the health services area so that it is safe and sanitary for the provision of health care.
 - c. Maintain all supplies and equipment in good working order, as defined by the manufacturer.
 - d. Maintain all X-ray equipment available for routine films at Southern State Correctional Facility in accordance with all state and federal standards.
 - e. Adhere to the appropriate DOC rules and policy documents on key control, fiscal management, and control of tools and equipment.
 - f. Develop and implement a process and procedure for the control, inventory, and secure management of all medications, syringes, needles, dental instruments, and other sharps. The Contractor will:

- i. Store and maintain all sharps within security regulations and guidelines set forth by DOC, NCCHC, Vermont's Occupational and Health Administration (VOSHA), and Centers for Disease Control and Prevention (CDC) guidelines.
 - ii. On a perpetual inventory, document the use of each needle, syringe, scalpel, or other sharp.
 - iii. Every day, account for all medications, syringes, needles, dental instruments, and other sharps. At a minimum, the procedure will require:
 - iv. Require that at change of shift, two nurses count all narcotics, sharps, and any other items subject to abuse. If the count is correct, each nurse will sign the control record. Notify the Facility Management and DOC Health Services Director of all unaccounted-for discrepancies as defined in Section 3.1.1 – Communication between DOC HSD and Contractor.
- g. Procure and maintain emergency medical equipment in a secure location, determined by DOC.
- h. Procure and maintain Automated External Defibrillators (AEDs) sufficient in number to meet the needs of each facility. The Contractor's Statewide Medical Director will determine the number and placement of AEDs in each facility, with approval from the DOC Health Services Director or designee, and work with the DOC HSD and DOC Facility Leadership to implement.
- i. Ensure necessary equipment is onsite to allow for moving infirm, non-ambulatory, and critically ill patients during an evacuation or other emergency.
- j. Provide and maintain first aid kits by doing the following:
 - i. Secure first aid kits with a plastic tear-away lock. If the lock is broken, staff will initiate a supply request to replace it.
 - ii. Check and replenish the contents of each kit monthly or as requested.
 - iii. Document monthly kit checks.
 - iv. Determine the location and contents of the first aid kits for each site in coordination with the Contractor's Statewide Medical Director, Contractor's facility healthcare staff, and facility management.

3.6.4 On-Site (and Off-Site) Diagnostic Services

1. The Contractor will, at a minimum, comply with NCCHC standard P-D-04.
2. The Contractor will also:
 - a. Provide directly or sub-contract with a laboratory to provide full laboratory services, diagnostic testing, and a fully detailed lab manual with instructions in all areas of specimen collection, handling, and processing. This includes but is not limited to:
 - i. Available routine, stat, and special tests.
 - ii. Turn-around times.
 - iii. Procedures for the safe storage and transport of specimens.
 - iv. Critical values reporting
 - v. Special chemistry and toxicology analysis
 - vi. The location of reference laboratories for tests not conducted by the primary lab Contractor.
 - vii. Timely pickup and delivery of specimens

- viii. Accurate reporting within a reasonable timeframe
 - ix. Maintenance of an electronic log to document the type and number of specimens sent and returned.
 - x. Immediate reporting of lost specimens so that the lab tests(s) may be repeated. Lost specimens will be reported to the DOC Facility Superintendent or designee and the Health Services Director or designee.
 - xi. A process for physicians to review, date, and initial laboratory results.
 - xii. A procedure for the timely review of laboratory results if the patient's primary provider is absent.
 - xiii. Upon reviewing the results of labs, document the results in the patient's EHR.
 - xiv. Informing patients of the results in a timely fashion.
 - xv. Re-attempting to draw labs as needed if a patient initially refuses.
 - xvi. Developing a process whereby providers can re-evaluate the patient and re-order laboratory tests, as appropriate.
- b. Verify that the any laboratory subcontractors:
- i. Meet federal, state, and local licensure, certification or credentialing as required including [Clinical Laboratory Improvement Amendments \(CLIA\)](#)
 - ii. Provide proof of professional liability insurance
 - iii. Operate according to a Business Associate Agreement
 - iv. Are registered to do business in Vermont.

3.6.5 Medical Diets

1. The Contractor will, at a minimum, comply with NCCHC standard P-D-05.
2. The Contractor will also:
 - a. Comply with the DOC policy on food services.
 - b. Document the need for medical diets in the OMS, in accordance with the policy, and in the patient's EHR.

3.6.6 Patient Escort

The Contractor will, at a minimum, comply with NCCHC standard P-D-06.

3.6.7 Emergency Services and Response Plan

1. The Contractor will, at a minimum, comply with NCCHC standard P-D-07.
2. The Contractor will also:
 - a. Comply with the DOC policy on emergency preparedness and response.
 - b. Provide emergency medical care necessary to stabilize any person, including DOC employees, contracted employees, volunteers, INCAPs (see Section 3.1.6) or visitors who are injured or become emergently ill while at a DOC facility until care is transferred to another qualified entity. Any required follow-up care will be the responsibility of the individual.

- c. Provide care to incarcerated individuals injured while working. For injuries that are covered under workers' compensation insurance, coordinate follow-up care with the employer's workers' compensation insurer until either the incarcerated individual's treating physician has released the individual to return to work or until the individual is discharged from the DOC facility, whichever occurs first. This includes providing necessary information, as requested, to the worker's compensation insurer to ensure the proper reporting and resolution of claims which take place on State property.

3.6.8 Hospital and Specialty Care

The Contractor will, at a minimum, comply with NCCHC standard P-D-08.

3.7 Section E – Patient Care and Treatment

3.7.1 Information on Health Services

1. The Contractor will, at a minimum, comply with NCCHC standard P-E-01.
2. The Contractor will document in the patient's EHR anytime an interpreter is used during health services and update the "Overview" and "Alerts" within the EHR to indicate the need for an interpreter.
3. The Contractor will make available to all patients a Notice of Privacy Practices in accordance with applicable laws and regulations.

3.7.2 Receiving Screening

1. The Contractor will, at a minimum, comply with NCCHC standard P-E-02.
2. The Contractor will also comply with Appendix 8 – Mental Health and Substance Use Workflow, Appendix 9 – Initial Intake Flow Diagram (focus on clinical pathway for Suicide prevention), [28 V.S.A. § 801](#), [28 V.S.A. § 905](#), [28 V.S.A. § 906](#), [28 V.S.A. § 907](#), and the DOC policy on suicide prevention and response to self-injurious behaviors.
3. The Contractor will use a standardized "Receiving Screening" form (approved by the DOC Health Services Director or designee) and provide screening for all patients within four hours of admission. In addition to the elements outlined in P-E-02, the screening will include:
 - a. A HIPAA compliant authorization for treatment (including authorization for Uses and Disclosures for Treatment, Payment, and Health Care Operations (TPO)), signed by the patient.
 - b. A signed acknowledgement that information regarding the ADA has been provided verbally and in writing.
 - c. A review of any current disabilities the patient has and any need for accommodations under the ADA and follow up in accordance with the DOC policy on effective communication.
 - d. Provision of ADA accommodations required to meet the immediate needs of the patient.

- e. Opt-out testing for HIV/AIDS in accordance with Appendix 10 – MOU with VDH and DOC for HIV Testing.
- f. Opt-out testing for HCV.
- g. A process to verify and track insurance enrollment status through discharge.
- h. A review of any records of previous mental health services provided in the current or prior incarceration episode(s).
- i. Texas Christian University -5 Substance use Screen (TCU-5)- if positive of OUD disposition is referral to QHCP for TCU Opioid Supplemental and further assessment as clinically indicated.
- j. Correctional Mental Health Screen for Men and Women (CMHS-M/W)
- k. Screening for Traumatic Brain Injury – HELPS Brain Injury Screening tool- if positive disposition is referral to QHCP and further assessment as clinically indicated.
- l. Screening for Dementia and neurologic disorders using the Short-Blessed Test- if positive disposition is referral to QHCP and further assessment as clinically indicated.
- m. A brief screening on tobacco use that is approved by DOC in collaboration with the VDH. This screening will include information necessary to determine if further lung cancer screening is needed according to the recommendations of the United States Preventive Screening Taskforce (USPSTF).
- n. Urine drug screen
- o. Routine referrals to medical or mental health will result in an “Initial Health Assessment” or “Mental Health and Substance Use Evaluation”, respectively, within seven days – refer to Appendix 8 – Mental Health and Substance Use Workflow.
- p. Other fields, at the discretion of the DOC Health Services Director or designee.

3.7.3 Transfer Screening

1. The Contractor will, at a minimum, comply with NCCHC standard P-E-03.
2. The Contractor will also have QHCPs review the transfer form and all pertinent health records within twelve hours of the patient’s arrival at the receiving facility.

3.7.4 Initial Health Assessment

1. The Contractor will, at a minimum, comply with NCCHC standard P-E-04.
2. The Contractor will also:
 - a. Obtain the patient’s authorization for treatment, if it has not been obtained prior to this time (see Section 3.7.2 – Receiving Screening).
 - b. Use a standardized “Initial Health Assessment” form (approved by the DOC Health Services Director or designee). In addition to the elements outlined in P-E-02, the assessment will include:
 - i. A documented review of the Receiving Screening results.
 - ii. A documented opportunity for HIV testing and brief counseling.
 - iii. A documented opportunity for HCV screening.
 - iv. A documented review of any positive results on the HELPS screening to determine if a patient has a traumatic brain injury and to develop an appropriate treatment

- plan.
- v. A documented opportunity to complete an advance directive.
 - vi. Date and time of completion.
 - vii. Signature and title of individual completing the assessment.
- c. Obtain signed releases of information from the patient, if not already completed, to coordinate with community providers who treated the patient prior to incarceration.

3.7.5 Mental Health (and Substance Use) Screening and Evaluation

1. The Contractor will, at a minimum, comply with NCCHC standard P-E-05.
2. The Contractor will also refer to Section 3.7.2 – Receiving Screening, Appendix 8 – Mental Health and Substance Use Workflow, [28 V.S.A. § 801](#), [28 V.S.A. § 905](#), [28 V.S.A. § 906](#), [28 V.S.A. § 907](#), and the [Rules Governing Medication-Assisted Therapy for Opioid Dependence for Office-Based Opioid Treatment \(OBOT\) Providers Prescribing Buprenorphine](#). The Mental Health and Substance Use Evaluation, in addition to the elements outlined in P-E-05, will include:
 - a. Evaluation using the Structured Clinical Interview for Diagnostic and Statistical Manual of Mental Disorders (DSM-5) (Structured Clinical Interview for DSM-5 (SCID-5); or its successor or as otherwise specified by the DOC Health Services Director or designee). Using the results of the SCID-5, the clinician will decide whether the patient meets the clinical criteria for a mental health and/or substance use disorder consistent with the DSM-5 and will cause a DSM-5 diagnostic impression into the EHR.
 - b. Evaluation using the Personality Inventory for DSM-5-Brief Form (PID-5-BF) or as otherwise specified by the DOC Health Services Director or designee).
 - c. Evaluation using the Corrections Modified Global Assessment of Functioning (CM-GAF) as indicated to determine clinical SFI.
 - d. Urine drug screen results reviewed with patient.
 - e. Administration of the General Ability Measure for Adults (GAMA) (or other tool as specified by the DOC Health Services Director or designee) for patients suspected of having low cognitive functioning.

3.7.6 Oral Care

1. The Contractor will, at a minimum, comply with NCCHC standard P-E-06.
2. The Contractor will also:
 - a. Provide a manual of dental operations, a written general orientation for all dental staff, and a mandatory orientation and training for all dental staff, specific to their job duties.
 - b. Provide an accounting of any dental backlog, if applicable, to the DOC Health Services Director or designee on a weekly basis.
 - c. Maintain any subcontractor arrangements with dental providers in conformance with [26 V.S.A. Chapter 12](#).
 - d. Refer patients who require treatment beyond the capabilities of the Contractor's licensed dentist to an off-site dental specialist.
 - e. Provide dental prostheses, including dentures, as determined to be medically necessary.

3.7.7 Nonemergency Healthcare Requests and Services

1. The Contractor will, at a minimum, comply with NCCHC standard P-E-07.
2. The Contractor will also:
 - a. Provide unimpeded access to comprehensive health services in compliance with [28 V.S.A. § 801](#).
 - b. Provide a mechanism for incarcerated individuals to have records of any healthcare requests.
 - c. Document in the patient's EHR all sick slips and responses in a way that supports data reporting and monitoring.

3.7.8 Nursing Assessment Protocols and Procedures

1. The Contractor will, at a minimum, comply with NCCHC standard P-E-08.
2. The Contractor will also ensure that nurse assessment protocols and pathways comply with and [26 V.S.A. Chapter 26](#) and other applicable state statutes, scope of practice requirements, and standards of care.

3.7.9 Continuity, Coordination, and Quality of Care During Incarceration

1. The Contractor will, at a minimum, comply with NCCHC standard P-E-09.
2. The Contractor will also:
 - a. Provide continuity of care in accordance with the DOC policy on case management.
 - b. Provide a plan that includes appropriate staffing (e.g. Statewide Director of Care Coordination and Care Coordinator(s)) to supervise the continuity of care practices and services to address the needs of individual patients and the population.
 - c. Develop and implement processes (utilizing the EHR) to standardize and improve care coordination and continuity of care activities.
 - d. Enter appropriate alerts or special needs into the OMS and the EHR.

3.7.10 Discharge Planning

1. The Contractor will, at a minimum, comply with NCCHC standard P-E-10.
2. The Contractor will also:
 - a. Provide discharge planning regardless of the patient's legal status, with the DOC understanding that full discharge planning isn't always possible to complete for an individual on rapid release and isn't expected for INCAPS.
 - b. Coordinate with the DOC staff including the Corrections Service Specialist (CSS) for release planning.
 - c. Provide patients with a discharge plan or "Continuity of Care Document."
 - d. Schedule follow up care for any ongoing or current treatment needs and inform the

patient of all pending appointments in the community, including the date, time, location, phone number, and name of the provider.

- e. Share the “Continuity of Care Document” and other specified information with the CSS and others as appropriate.
 - i. Provide all patients with at a minimum, a 30-day supply of bridge medications or prescriptions.
 - ii. Refer patients to the VCCI and other community organizations as appropriate.
 - iii. Comply with Section 3.1.7 - Patients with Serious Mental Illness or with a Serious Functional Impairment regarding discharge planning for individuals that are SFI/SMI.
 - iv. Comply with Section 3.1.8 – Multidisciplinary Case Planning.

3.8 Section F – Special Needs and Services

3.8.1 Patients with Chronic Disease and Other Special Needs

1. The Contractor will, at a minimum, comply with NCCHC standard P-F-01.
2. The Contractor will also:
 - a. Utilize a chronic disease model and develop, whenever needed, appropriate encounter forms and templates in the EHR.
 - b. Comply with any Vermont specific requirements as outlined in Section 3.1.
 - c. Comply with the DOC policy on effective communication.
 - d. Comply with reporting requirements as outlined in Appendix 6 – Reporting Requirements or any subsequent requirements at the discretion of the DOC Health Services Director or designee.
 - e. For patients who have a mental health condition, substance use disorder, or psychiatric disability or disorder, develop and maintain “Mental Health - Individualized Treatment Plans” which are SMART. The Individualized Treatment Plans will include, but not be limited to:
 - i. Current medications.
 - ii. Current SCID-5 Diagnostic Impression.
 - iii. Current CM-GAF results (if applicable e.g. assessing for Serious Functional Impairment/SFI)
 - iv. Collateral information including from Community High School of Vermont, past community treatment providers, etc.
 - v. Problem statements relevant to current diagnosis and corresponding treatment goals.
 - vi. Specific goals of treatment.
 - vii. Objectives of treatment (what the patient will do to achieve the goals).
 - viii. Evidenced based treatment offered/provided.
 - ix. Type, frequency, and duration of all interventions.
 - x. Duration of the plan, including the date that progress towards the goals will be reviewed.
 - xi. ADA accommodations needed.

Treatment plans will be updated every ninety days or as clinically indicated. As part of this update, the patient will be re-assessed for diagnostic impression, treatment plan revised as clinically indicated and master problem list in the EHR updated.

3.8.2 Infirmery-Level Care

1. The Contractor will, at a minimum, comply with NCCHC standard P-F-02.
2. The Contractor will also:
 - a. Provide direct nursing observation of patients in the infirmary at all times.
 - b. Provide sufficient staffing in the infirmary so that patients are always able to gain a QHCPs attention through visual or auditory signals.
 - c. Require that the Director of Nursing at each site with an infirmary be a RN.
 - d. Admit and discharge patients from the infirmary based on the clinical discretion of the Statewide Medical Director or facility-level provider.
 - e. In the patient's EHR, create an infirmary record upon admission and maintain it through discharge. The record will include but not be limited to:
 - i. Admitting orders, including the admitting diagnosis, medications, medication administration record, diet, activity restrictions, any required diagnostic tests, and the frequency of vital sign follow-up.
 - ii. A nursing plan of care developed by a RN with measurable goals and objectives, consistent with the format promulgated by the North American Nursing Diagnosis Association.
 - iii. Discharge orders, if applicable, with the discharge plan.
 - f. Develop a manual of infirmary nursing policies and procedures. The manual will be consistent with, [26 V.S.A. Chapter 28, Vermont State Board of Nursing APRN/RN/LPN Scope of Practice](#), and licensing requirements, and approved by the DOC Health Services Director or designee.

3.8.3 Mental Health Services:

1. The Contractor will, at a minimum, comply with NCCHC standard P-F-03.
2. The Contractor will also:
 - a. Require that treatment recommendations be developed by the QMHP based on the mental health evaluation diagnostic impressions and provided to the patient orally and in writing within 14 calendar days of the completed evaluation as outlined in the "Mental Health (and Substance Use) Screening and Evaluation" section of the Mental Health and Substance Use Workflow. Psychoeducation about a menu of treatment and recovery options will also be provided.
 - b. Provide substance abuse group or individual treatment such as Integrated Change Therapy, Seeking Safety, Marlatt's Relapse Prevention, Mindfulness and Motivational Interviewing, or other modalities recommended by the DOC Health Services Director or designee.
 - c. Provide access to technology-enabled mental health and substance abuse treatment and recovery (when available). This may include Virtual Reality Exposure Treatment

- (VRET) and nature streaming (i.e. Green Therapy) treatment options.
- d. Refer the patient to Peer Recovery and Support Services (when available).
 - e. Make available and seek consent for behavioral health treatment, pharmacotherapy, or both as appropriate. If the patient does not consent, this will be documented in the patient's EHR and no further action will be needed unless clinical presentation changes and/or the patient re-initiates.
 - f. Develop a patient-centered treatment plan addressing the patient identified problem and the treatment and recovery options available should the patient consent to behavioral treatment. Determine the frequency of treatment based on clinical need.
 - i. Community Outpatient level of care standard is 1x/week.
 - ii. Community Intensive Outpatient standard level of care can be met by combining 1x/week outpatient individual with these modalities: group, support group and use of tablet-based recovery support.
 - g. Refer patients that consent to pharmacotherapy as part of the patient centered treatment plan to a qualified psychiatric provider.
 - h. Add patients to the mental health caseload and develop a treatment plan within 14 days when the results of the mental health evaluation indicate that the patient is a person with a mental health condition.
 - i. Indicate follow-up timeframes in days or weeks and determine follow-up timeframes based on clinical need (Level of Care Utilization System (LOCUS)/American Society of Addiction Medicine (ASAM)/Diagnostic Impression). Unless the patient has been discharged from the mental health caseload or refuses behavioral treatment, follow up timeframes will not be indicated as "PRN" or "at the request of the individual" or "through sick call".
 - j. Document referral to inpatient psychiatric facilities, including when the patient was initially referred, the outcome of the referral (accepted or denied), reasons for denial, date of placement, and latency between the initial referral and date of placement.
 - k. Adopt or provide a policy consistent with Appendix 11 - Emergency Psychotropic Medications.
 - l. See [18 V.S.A. § 7624](#) as revised or amended which relates to the involuntary administration of medications in inpatient settings. The Vermont DOC is not considered an "inpatient" setting. The Contractor will not participate in the administration of involuntary medications. Patients in need of involuntary medications may be transferred to the emergency room or referred to an inpatient setting (e.g., an inpatient psychiatric facility) where involuntary medication procedures may commence.

3.8.4 Medically Supervised Withdrawal and (Medication Assisted) Treatment

1. The Contractor will, at a minimum, comply with NCCHC standard P-F-04.
2. The Contractor will also:
 - a. Adopt or provide a policy consistent with Appendix 12 – MAT Policy and Procedure
 - b. Adopt or provide a policy consistent with Appendix 13 – MAT Clinical Guidelines.
 - c. Comply with any grants related to MAT services (e.g RSAT grant for residential services).

3.8.5 Intoxication and Withdrawal

The Contractor will, at a minimum, comply with NCCHC standard P-F-05.

3.8.6 Counseling and Care of the Pregnant Patient

1. The Contractor will, at a minimum, comply with NCCHC standard P-F-05.
2. The Contractor will also:
 - a. Coordinate with off-site specialty services when appropriate (e.g. birthing plans, breast pumping and milk storage, high-risk pre-natal care, and delivery services.)
 - b. Coordinate with an off-site provider to for abortion services if desired by the patient. The cost of abortion services will be borne by the DOC.

3.8.7 Response to Sexual Abuse

1. The Contractor will, at a minimum, comply with NCCHC standard P-F-06.
2. The Contractor will also:
 - a. Comply with the Prison Rape Elimination Act of 2003 (Federal Law 42 U.S.C. 15601 et. seq.).
 - b. Comply with the DOC policy on Prison Rape Elimination Act (PREA) staff sexual misconduct facilities, which is the primary policy document that supports the adherence to PREA and its corresponding standards. However, the DOC also embeds PREA requirements throughout DOC Directives and in facility specific documents that establish local policies.
 - c. Not provide services outside of those required to assess the patient for physical injuries that may potentially require immediate medical attention. In other words, the Contractor will not provide what could be considered a “forensic” examination.
 - d. Assist DOC in coordinating transfer of the patient to a local hospital emergency department where the patient will be offered an examination by a Sexual Assault Nurse Examiner (SANE) or other QHCP.
 - e. When evaluating the extent of injuries and/or the need for outside medical services, not take intentional or accidental actions that may remove, dilute, or destroy evidence.

3.8.8 Care for the Terminally Ill

1. The Contractor will, at a minimum, comply with NCCHC standard P-F-07.
2. The Contractor will also provide advance care directives, palliative care, and hospice care to include:
 - a. Referring, utilizing, and adhering to [18 VSA §§9700-9731](#) related to advance directives for healthcare, disposition of remains, and surrogate decision making.
 - b. Utilizing the appropriate advance care directive forms and instructions provided by the Vermont Ethics Network. The completed forms should be recorded in the EHR. A copy will be sent to the DOC Health Services Director or designee and will be sent to the

Statewide registry for recording.

- c. Maintaining space located at Southern State Correctional Facility, Northern State Correctional Facility, and Chittenden Regional Correctional Facility where palliative and hospice care is provided.
- d. Complying with the DOC policy on medical furlough and medical parole.

3.9 Section G – Medical Legal Issues

3.9.1 Restraint and Seclusion

1. The Contractor will, at a minimum, comply with NCCHC standard P-G-01.
2. The Contractor will also comply with the DOC rules and policy documents on the:
 - a. use of restraints and the roles of security and health care professionals in facilities;
 - b. use of a restraint chair; and
 - c. the classification, treatment, and use of administrative segregation and disciplinary segregation for inmates with serious mental illness.

3.9.2 Segregated Patients

1. The Contractor will, at a minimum, comply with NCCHC standard P-G-02.
2. The Contractor will also:
 - a. Screen patients for contraindications to segregation placement using a DOC approved screening tool prior to placement.
 - b. Contribute, participate, and meet the health-related expectations of plan for the patient to transition from segregation to the general population.
 - c. Refer to [28 V.S.A. § 853](#) and [28 V.S.A. § 857](#) for the Vermont specific definition and requirements of segregation. Vermont does not utilize solitary confinement as referenced within this standard.
 - d. Comply with Section 3.1.7 – Patients with Serious Mental Illness or with a Serious Functional Impairment

3.9.3 Emergency Psychotropic Medications

1. The Contractor will, at a minimum, comply with NCCHC standard P-G-03.
2. The Contractor will comply with Appendix 11 – Emergency Psychotropic Medications.

3.9.4 Therapeutic Relationship, Forensic Information, and Disciplinary Actions

The Contractor will, at a minimum, comply with NCCHC standard P-G-04.

3.9.5 Informed Consent and Right to Refuse

1. The Contractor will, at a minimum, comply with NCCHC standard P-G-05.
2. The Contractor will also require that all examinations, treatments, and procedures be governed by informed consent practices that are applicable in the State of Vermont.

3.9.6 Medical and Other Research

1. The Contractor will, at a minimum, comply with NCCHC standard P-G-06.
2. The Contractor will also comply with the DOC policy on relationships with outside entities. At no time will the Contractor agree to a patient's request for, or pursue participation on behalf of, a patient in medical or other research without informing the DOC Health Services Director or designee.

3.9.7 Executions

Not relevant in Vermont

ATTACHMENT B – PAYMENT PROVISIONS

The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this contract. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this attachment. The following provisions specifying payments are:

1. Prior to commencement of work and release of any payments, Contractor will submit to the State:
 - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
 - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 15** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation. Contractor will submit invoices on the 15th of each month of service. The DOC agrees to approve invoices on a “due now” basis for the first six months of the contract and on an as needed basis throughout the contract term.
3. Contractor will submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract # for this contract.
4. Contractor will submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices will be submitted not more frequently than monthly.
5. Invoices will be submitted to the State via email addressed to the DOC Health Services Director.
6. The payment schedule is as follows:

The Contractor’s three-year price is inclusive of Comprehensive Health Services, Pharmacy, Off-Site Services, Regional Office, and Corporate Overhead and Profit (see Appendix 14 – Annual Budgeted Financials) based on the contracted Per Individual Per Month (PIPM) rate. In years one through three, the PIPM will be multiplied by 1250 if the average daily population (ADP) is between 1200-1300. Payment will be as follows:

Year 1 – PIPM = \$2,253.33

Year 2 – PIPM = \$2,476.81

Year 3 – PIPM = \$2,636.74

If the ADP is outside of the 1200-1300 ADP range, the Contractor and the State will negotiate in good faith to address any adjustment to compensation or service. A change in the ADP may or may not result in a change in the PIPM or ADP range.

In accordance with Appendix 14 – Annual Budgeted Financials, the Contractor will invoice transition costs of \$600,000 to the State upon execution of the contract. That amount will be considered an advance or retainer payment and will be deducted from the monthly invoices (\$50,000 per month) over the first contract year.

In addition to the payment terms above and in accordance with Attachment A, Section 3.1.12, if the State requests additional or updated equipment related to the DOC's ADA accommodations related pager system, the costs associated with the additional or updated equipment and maintenance of the pager system will be reimbursed by the DOC. These costs will not be considered part of the PIPM rate.

7. Corporate Overhead and Profit: For Year 1, the Contractor's profit and corporate overhead will be a flat rate based on the total budgeted amount for the sum of Comprehensive Health Services, Pharmacy, Off-site Services, and Regional Office of the contract. A rate of 9.0941% for contract year 1 and 10% for contract years 2 and beyond for profit and corporate overhead will apply.
8. Payment Adjustments: All performance incentives, liquidated damages, and holdbacks will be documented by the State and provided to the Contractor. If the Contractor disagrees with the findings, they may submit additional material in support of the standard having been met. These materials will be reviewed by the DOC Health Services Director or designee who will make a decision on payment adjustments. If the Contractor does not agree with such decision, Contractor may initial the dispute resolution process in Section 16 of this Attachment B.

The parties agree that liquidated damages and holdbacks included in this contract will not apply in situations where the Contractor's failed performance is related to events or actions outside of the control of the Contractor.

- a. Liquidated Damages: Failure to comply with the requirements of this contract and subsequently, failure on the Contractor's part to verify that deficiencies or contract compliance issues have been addressed within the specified timeframe may result in liquidated damages. Liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. The Contractor will pay liquidated damages to the State without limiting the State's right to terminate this agreement for default as provided elsewhere herein. If there is a determination of actual damage, the calculated amount may be deducted from the Contractor's total remittance for the month. Refer to Appendix 15 – Liquidated Damages Calculator for additional information. Any liquidated damages deducted from the Contractor's standard monthly invoice will not be reimbursed later.

- b. **Holdbacks:** A 5% holdback of the Contractor's total monthly invoice may be retained if the Contractor fails to provide timely and accurate reporting requirements as outlined in Section 3.3.4 – Administrative Meetings and Reports. The State will release the holdback for that month once the Contractor has fulfilled the reporting requirements specified here and in Section 3.3.4. If at any time there are three or more months with active holdback, the Contract Monitoring and Improvement Process outlined in Section 2.2 – Deficiencies and Contract Monitoring will automatically be initiated.

The Contractor will maintain NCCHC accreditation for healthcare services for every current and future facility in the State. If accreditation by the NCCHC is lost at any time due to Contractor's acts/omissions, a \$500 holdback per day per non-accredited facility will be assessed against the Contractor until the non-accredited facility(ies) receive(s) either provisional or full accreditation. If NCCHC issues provisional accreditations, the \$500 per day/per facility(ies) will be waived up to one hundred eighty (180) days. Any future facility will be given a one (1) year grace period for receiving NCCHC accreditation before any penalties may be assessed. The beginning and ending dates of the holdback will be governed by any written communication from the NCCHC.

- c. **Pay-for-Performance Incentive Payments:** To encourage the provision of high-quality services that lead to improvements in healthcare outcomes and processes, the Contractor will have the opportunity to earn an additional percentage of the total yearly price proposal, excluding the Corporate Overhead and Profit indicated on Tab F of Appendix 14, based on a set of Pay-for-performance (P4P) metrics. The maximum available P4P incentive earnings for the contract term will be 3% for each contract year. The Contractor will earn P4P incentives based on the proportion of the range that is achieved for a specific metric. The percentage achieved will be calculated based on the overall performance of all sites.

Refer to Appendix 16 – Payment Adjustments Invoice Calculator. This tool will be used to calculate the Contractor's monthly P4P incentive payment. For each P4P metric, the Contractor will submit the numerator and denominator calculations to the DOC, and the DOC will enter the data into Appendix 16 and add the calculated incentive payment to the Contractor's monthly payment.

Refer to Appendix 17 – Summary of P4P Metrics Current and Appendix 18 – Summary of P4P Metrics Future which will be linked to the financial incentives represented in Tab E of Appendix 14. At any time during the contract term, the State may add, eliminate, or modify any metric in Appendix 17 to reflect the priorities of the State and any quality improvement/corrective action planning that has occurred. Changes to the set of metrics in Appendix 17 will not impact the total available amount that the Contractor could earn in additional financial incentive payments.

9. **Catastrophic Loss:** The State will cover expenses for Catastrophic Loss cases, defined as when the off-site expenses for any individual exceed \$85,000 per contract year. The Contractor will be responsible for paying the initial \$85,000 for catastrophic loss cases which should already be included in the total PIPM. The threshold for Catastrophic Loss cases was derived from historical off-site financial data by the State.
10. **Claims Processing:** The Contractor will maintain a claims processing system that complies with all state and federal regulations.
11. **Reconciliation of Costs:** The parties will perform reconciliations of the Actual Costs incurred versus the Budgeted Costs quarterly during the term of the Agreement (collectively the “Quarterly Reconciliations”). Such Quarterly Reconciliations will be provided to the State within thirty (30) days after the end of each quarter. Contractor’s documentation will be submitted in a format that provides both a cumulative contract year-to-date report and a quarterly report. Contractor will provide estimates of incurred Offsite services costs to include claims incurred but not yet received.

In addition to the Quarterly Reconciliations, the Contractor will provide a final reconciliation (the “Final Reconciliation”) of the Actual Costs versus Budgeted Costs within 150 days after the end of each annual contract year. The parties recognize that Contractor will make every reasonable effort to control the timeliness of the submission of claims from third party providers, but there may be instances in which claims are received by Contractor after the 150th day of the final reconciliation period. In such instances, notwithstanding anything in this paragraph to the contrary, State agrees that it will pay such claims to the extent the State is responsible under the provisions of this Attachment B.

12. **Cost Differentials:** In the event that the Contractor’s overall expenses for Comprehensive Health Services, Pharmacy, and Offsite Services are more than the overall budgeted amount, the Contractor will be responsible for the first 3% over the budgeted amount. In the event that the Contractor’s overall expenses for Comprehensive Health Services, Pharmacy, and Offsite Services are more than the overall budgeted amount by more than 3%, the State will be responsible for the second 3% over the budgeted amount. In the event that the Contractor’s overall expenses are more than the overall budgeted amount by more than 6%, the State and the Contractor will negotiate in good faith responsibility for additional overages and consider factors that lead to the overages. If an agreement cannot be reached, the Contractor and the State agree to follow the process outlined in Section 16 – Dispute Resolution. If the overall expenses of Comprehensive Health Services, Pharmacy, and/or Offsite Services are over the aggregate budget by 106%, the State will be responsible for such overages, provided the cause of such overages are outside the control of Contractor.

It will be understood with regard to the State’s payment of any amounts in excess of the budgeted amount that the Contractor must demonstrate through documentation that it used industry-standard best practices to control these costs. This documentation could include but is not limited to attempts to innovatively manage the utilization of Off-Site services including but not limited to using telemedicine and contracting with off-site

providers for reduced rates using Medicaid, Medicare or other reduced-cost rates, implantation of new programs and processes to improve care while controlling costs, or more effective planning of care and services. Reports and data, claims, and other financial information will be used to demonstrate the Contractor's efforts.

In the event that in any particular contract year the Contractor's actual expenses in Comprehensive Health Services, Pharmacy, or Offsite Services is less than the budgeted amount, the Contractor acknowledges and agrees that the State will apply the difference in the actual and budgeted amounts (Contractor Savings) to reduce expenses that may be in excess of their budgeted amounts in another category. The Contractor agrees that the application of any such savings will occur prior to the State's financial responsibility for costs in excess of budgeted amounts.

13. **Contract Savings:** In the event that the Contractor's overall expenses, after consideration of Section 12 (Cost Differentials), are less than the overall budgeted amount, the Contractor will reimburse the State for the variance on an annual basis no later than 30 days after the "Final Reconciliation." The funds will be retained by the State and allocated at its discretion.
14. **Pharmaceuticals:** If the Contractor receives medications that are donated or provided at no cost to the Contractor, the Contractor agrees that any resulting savings will be applied to other areas of the budget to offset any overages and be subject to Section 13 Contract Savings.
15. **Change in Scope of Services:** The parties agree that should there be any change in or modification of inmate population distribution, standards of care, including but not limited to a change in any material respect to any treatment protocol or modality or if any new medication or therapy is introduced to treat any illness, disease or condition, scope or volume of services, laws, regulations or policy or the number of facilities that results in material costs or savings to the Contractor, the costs or savings related to such changes or modifications are not covered in this Agreement, and will be negotiated in good faith between the parties. Any such adjustments will be fully documented and attached to the Agreement in the form of amendments. If the parties are unable to agree upon an appropriate compensation adjustment resulting from a change in scope of services, the parties will resolve such dispute in accordance with the dispute resolution provisions specified in Section 16 below.

The changes that do not have a material effect on the maximum of the contract will be agreed to in writing and signed by the Health Services Director or designee and the Contractor's Senior Vice President or designee. The change orders will be considered part of the contract and binding on both parties.

16. **Dispute Resolution:** For any and all claims, controversies or disputes (collectively "dispute") arising under this Agreement, including dispute related to indemnification, or the breach thereof, the parties will work together in good faith to resolve the dispute. In the event that the State requests the Contractor indemnify the State and the Contractor

determines that the claim, injury, death, or damage to property was the result of an act or omission on the part of the State, its officers or employees, agents, or independent vendors (other than Party) who are responsible to the State, the Contractor may indicate in the response to the State the determination of indemnification and reasoning for such. In the event the parties cannot resolve their dispute, either party will have the right to request mediation ("Mediation Request") by a neutral and/or disinterested third-party (the "Mediator") who will, at a minimum, be an attorney licensed to practice law in the State of Vermont. The parties agree to share equally the cost of the mediation. After the request by a party is made for mediation, no party may initiate litigation until such time as the dispute is deemed "irreconcilable" as described below. In the event the parties must mediate any aspect of this contract, they will agree to terms and conditions of such mediation at the appropriate time and in consultation with the mediator.

Within 15 working days of the receipt of any Mediation Request, the parties will agree upon a Mediator. Upon reaching an agreement upon a Mediator, the parties will then participate in and complete mediation before the Mediator within 90 days thereafter. If the parties (1) are unable to agree upon a Mediator within this designated timeframe, (2) do not complete mediation within the designated timeframe, or (3) are unable to reach a mutual resolution of the dispute during the course of mediation, then the dispute will be deemed as "irreconcilable" at that time and legal remedies may be pursued.

**ATTACHMENT C – STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017**

1. Definitions: For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains

the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

- Premises - Operations
- Products and Completed Operations
- Personal Injury Liability
- Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

- \$1,000,000 Each Occurrence
- \$2,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this

Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any

other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

27. Termination:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

28. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must

be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party’s employee’s rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

**ATTACHMENT D – MODIFICATIONS OF CUSTOMARY PROVISIONS
OF
ATTACHMENT C, ATTACHMENT D-IT
OR ATTACHMENT F**

1. The insurance requirements contained in Attachment C, Section 8 are hereby modified:

To Add:

Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement including coverage for sexual assault and molestation, with minimum coverage of **\$3,000,000.00** per occurrence, and **\$6,000,000.00** aggregate.

2. Requirements of other Sections in Attachment C are hereby modified:

A. A. By deleting Section 24 titled Confidentiality and replacing it with:

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Party, and which gives the Party an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Party of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Party information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c). Party may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Party agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production. Party shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Party's attempts to prevent or unreasonably delay public disclosure of Party's information if a final decision of a court of competent jurisdiction determines that the State improperly withheld such information and that the improper withholding was based on Party's attempts to prevent public disclosure of Party's information.

3. Requirements of Sections in Attachment D – IT System Implementation are hereby modified:

A. By deleting Section 4.1 titled Contractor Intellectual Property and replacing it with:**4.1 Contractor Intellectual Property.**

As between the parties, and subject to the terms and conditions of this Contract, Contractor and its third-party suppliers will retain ownership of all intellectual property rights in the Wellpath Client Portal, and any and all derivative works made to the Wellpath Client Portal or any part thereof, as well as all Work Product provided to the State and (ii) all Contractor trademarks, trade names, logos and other Contractor identifiers (“Contractor Proprietary Technology”). The State acquires no rights to Contractor Proprietary Technology except for the licensed interests granted under this Contract. The term “Work Product” means all other materials, reports, manuals, visual aids, documentation, ideas, concepts, techniques, inventions, processes, or works of authorship developed, provided or created by Contractor or its employees or contractors during the course of performing work for the State (excluding any State Data or derivative works thereof, excluding any Contractor Intellectual Property or Confidential Information, and excluding any output from the Wellpath Client Portal generated by the State’s use of the Wellpath Client Portal, including without limitation, reports, graphs, charts and modified State Data, but expressly including any form templates of such reports, graphs or charts by themselves that do not include the State Data).

Title, ownership rights, and all Intellectual Property Rights in and to the Wellpath Client Portal will remain the sole property of Contractor or its suppliers. The State acknowledges that the source code is not covered by any license hereunder and will not be provided by Contractor. Except as set forth in this Contract, no right or implied license or right of any kind is granted to the State regarding the Wellpath Client Portal or any part thereof. Nothing in this Contract confers upon either party any right to use the other party's trade names and trademarks, except for permitted license use in accordance with this Contract. All use of such marks by either party will inure to the benefit of the owner of such marks, use of which will be subject to specifications controlled by the owner. State may not use Contractor Intellectual Property for any purpose other than as specified in this Contract. Except as otherwise noted in this Agreement, upon expiration or termination of this Contract, State shall return or destroy all Contractor Intellectual Property and all copies thereof, and State shall have no further right or license to such Contractor Intellectual Property.

Contractor shall retain all right, title and interest in and to (1) any work, ideas, inventions, discoveries, tools, methodology, computer programs, processes and improvements and any other intellectual property, tangible or intangible, that has been created by Contractor prior to entering into this Contract and (ii) all Contractor trademarks, trade names, logos and other Contractor identifiers (“Contractor Intellectual Property”). The State may not use Contractor Intellectual Property for any purpose other than as specified in this Contract. Except as otherwise noted in this Agreement, upon expiration or termination of this Contract, State shall return or destroy all Contractor Intellectual Property and all copies thereof, and State shall have no further right or license to such Contractor Intellectual Property.

B. By deleting Section 4.3 titled Work Product and replacing it with:**4.3 Work Product.**

“Work Product” means any tangible or intangible ideas, inventions, improvements, modifications, discoveries, development, customization, configuration, methodologies or processes, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, work of authorship, specifications, operating instructions, procedures manuals or other documentation, technique, know-how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection), that is specifically made, conceived, discovered or reduced to practice by Contractor, either solely or jointly with others, pursuant to this Contract. Work Product does not include Contractor Intellectual Property, Confidential Information, or third party intellectual property.

To the extent delivered under this Contract, upon full payment to Contractor in accordance with Attachment B, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to all Deliverables, except to the extent they include any Contractor Intellectual Property or Confidential Information; and (ii) grants to State a perpetual, non-exclusive, irrevocable, royalty-free license to use for State’s internal business purposes, any Contractor Intellectual Property included in the Deliverables in connection with its use of the Deliverables and, subject to the State’s obligations with respect to Confidential Information, authorize others to do the same on the State’s behalf. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Intellectual Property.

C. By deleting Section 6.1 titled Security Standards and replacing it with:

6.1 Security Standards. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with the HIPAA Security Rule (45 CFR Part 160 and Subparts A and C of Part 164) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the

Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include, but not be limited to, encryption at rest and multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

D. By deleting Section 6.2 titled Security Breach Notice and Reporting and replacing it with:

6.2 Security Breach Notice and Reporting. The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the State upon request.

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to this Contract, in the event of any actual security breach or reasonable belief of an actual security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (a “Security Breach”), the Contractor shall notify the State within 3 business days of its discovery. Contractor shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. Contractor shall analyze and document the incident and provide all notices required by applicable law.

E. By deleting Section 6.6 titled Vulnerability Testing and replacing it with:

6.6 Vulnerability Testing. Contractor shall remediate all critical issues/vulnerabilities within 90 days and all high issues within 120 days as appropriate via its vulnerability management program. Vulnerability assessments shall be performed on no less than a quarterly basis. Contractor shall review medium and low vulnerabilities and selectively remediate those where Contractor determines the risk warrants remediation.

F. By deleting Section 9 titled Limitations of Liability and replacing it with:

9. LIMITATION OF LIABILITY.

CONTRACTOR'S LIABILITY FOR DAMAGES TO THE STATE ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT SHALL NOT EXCEED \$20,000,000. LIMITS OF LIABILITY FOR STATE CLAIMS SHALL NOT APPLY TO STATE CLAIMS ARISING OUT OF: (A) CONTRACTOR'S OBLIGATION TO INDEMNIFY THE STATE; (B) CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS TO THE STATE; (C) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; (D) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT; OR (E) VIOLATIONS OF THE STATE OF VERMONT FRAUDULENT CLAIMS ACT. IN NO EVENT SHALL THIS LIMIT OF LIABILITY BE CONSTRUED TO LIMIT CONTRACTOR'S LIABILITY FOR THIRD PARTY CLAIMS AGAINST THE CONTRACTOR WHICH MAY ARISE OUT OF CONTRACTOR'S ACTS OR OMISSIONS IN THE PERFORMANCE OF THIS CONTRACT.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, DAMAGES WHICH ARE UNFORESEEABLE TO THE PARTIES AT THE TIME OF CONTRACTING, DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY, SUCH AS LOSS OF ANTICIPATED BUSINESS, OR LOST PROFITS, INCOME, GOODWILL, OR REVENUE IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT.

The provisions of this Section shall apply notwithstanding any other provisions of this Contract or any other agreement.

G. By deleting Section 14 titled Access to State Data and replacing it with:**14 ACCESS TO STATE DATA:**

The State may import, export, or alter State Materials provided to the State by the Contractor. The Contractor must be able to provide, in part or in whole, at the State's discretion at any time (24 hours a day, seven (7) days a week, 365 days a year), during the term of this Contract or for up to three (3) months after the Term (so long as the State Materials remain in the Contractor's possession) without interference from the Contractor in a format usable without the Service and in an agreed-upon file format and medium at no additional cost to the State.

The Contractor's policies regarding the retrieval of data upon the termination of services have been made available to the State upon execution of this Contract under separate cover. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

H. By deleting Section 16 titled Audit Rights and replacing it with:**16 AUDIT RIGHTS**

Contractor will maintain and cause its permitted contractors to maintain a complete audit trail, where systematically possible, of all transactions and

activities, financial and non-financial, in connection with this Contract. Contractor will provide to the State, its internal or external auditors, clients, inspectors, regulators and other designated representatives, at reasonable times (and in the case of State or federal regulators, at any time required by such regulators) access to Contractor personnel and to any and all Contractor facilities or where the required information, data and records are maintained, for the purpose of performing audits and inspections (including unannounced and random audits) of Contractor and/or Contractor personnel and/or any or all of the records, data and information applicable to this Contract.

At a minimum, such audits, inspections and access shall be conducted to the extent permitted or required by any laws applicable to the State or Contractor (or such higher or more rigorous standards, if any, as State or Contractor applies to its own similar businesses, operations or activities), to (i) verify the accuracy of charges and invoices; (ii) verify the integrity of State Data and examine the systems that process, store, maintain, support and transmit that data; (iii) examine and verify Contractor's and/or its permitted contractors' operations and security procedures and controls; (iv) examine and verify Contractor's and/or its permitted contractors' disaster recovery planning and testing, business resumption and continuity planning and testing, contingency arrangements and insurance coverage; and (v) examine Contractor's and/or its permitted contractors' performance of the Services including audits of: (1) practices and procedures that are public facing and applicable to this Contract; (2) systems, communications and information technology; (3) general controls and physical and data/information security practices and procedures; (4) contingency and continuity planning, disaster recovery and back-up procedures for processes, resources and data; (5) Contractor's and/or its permitted contractors' efficiency and costs in performing Services; (6) compliance with the terms of this Contract and applicable laws, and (7) any other matters reasonably requested by the State and agreed to by Contractor. Contractor shall provide and cause its permitted contractors to provide full cooperation to such auditors, inspectors, regulators and representatives in connection with audit functions and with regard to examinations by regulatory authorities, including the installation and operation of audit software. Notwithstanding the above, such audits shall occur a maximum of one time per calendar year, and any expenses of the State related to such audit shall be of no cost to Contractor.

4. Requirements of Sections in Attachment E are hereby modified:

By deleting the definition of "Targeted Unsuccessful Security Incident: and replacing it with:

"Targeted Unsuccessful Security Incident" means an Unsuccessful Security Incident that appears to be an attempt to obtain unauthorized Access, Use, Disclosure, modification or destruction of the Covered Entity's Electronic PHI, but shall not include any pings or other broadcast attacks or comparable attacks.

5. Requirements of Sections in Attachment F are hereby modified:

By deleting Section 7, Data Breaches and replacing it with:

Data Breaches: Party shall report to AHS, through its Chief Information Officer (CIO), any impermissible use or disclosure that compromises the security, confidentiality or privacy of any form of protected personal information identified above within three (3) business days of the discovery of the breach. Party shall in addition comply with any other data breach notification requirements required under federal or state law.

State of Vermont – Attachment D - Revised AHS – 04/17/2019

ATTACHMENT D - INFORMATION TECHNOLOGY SYSTEM IMPLEMENTATION

TERMS AND CONDITIONS (rev. 07/14/2022)

1. MODIFICATIONS TO CONTRACTOR DOCUMENTS

The parties specifically agree that the Contractor Documents are hereby modified and superseded by Attachment C and this Attachment D.

“Contractor Documents” shall mean one or more document, agreement or other instrument required by Contractor in connection with the performance of the products and services being purchased by the State, regardless of format, including the license agreement, end user license agreement or similar document, any hyperlinks to documents contained in the Contractor Documents, agreement or other instrument and any other paper or “shrinkwrap,” “clickwrap,” “browsewrap” or other electronic version thereof.

2. NO SUBSEQUENT, UNILATERAL MODIFICATION OF TERMS BY CONTRACTOR

Notwithstanding any other provision or other unilateral license terms which may be issued by Contractor during the Term of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for the products and services being purchased by the State, as applicable, the components of which are licensed under the Contractor Documents, or the fact that such other agreement may be affixed to or accompany the products and services being purchased by the State, as applicable, upon delivery, the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.

3. TERM OF CONTRACTOR’S DOCUMENTS; PAYMENT TERMS

Contractor acknowledges and agrees that, to the extent a Contractor Document provides for alternate term or termination provisions, including automatic renewals, such sections shall be waived and shall have no force and effect. All Contractor Documents shall run concurrently with the term of this Contract; provided, however, to the extent the State has purchased a perpetual license to use the Contractor’s software, hardware or other services, such license shall remain in place unless expressly terminated in accordance with the terms of this Contract. Contractor acknowledges and agrees that, to the extent a Contractor Document provides for payment terms which differ from the payment terms set forth in Attachment B, such sections shall be waived and shall have no force and effect and the terms in Attachment B shall govern.

4. OWNERSHIP AND LICENSE IN DELIVERABLES

4.1 Contractor Intellectual Property. As between the parties, and subject to the terms and conditions of this Contract, Contractor and its third-party suppliers will retain ownership of all intellectual property rights in the [System], and any and all derivative works made to the [System] or any part thereof, as well as all Work Product provided to the State (“**Contractor Proprietary Technology**”). The State acquires no rights to Contractor Proprietary Technology except for the licensed interests granted under this Contract. The term “**Work Product**”

means all other materials, reports, manuals, visual aids, documentation, ideas, concepts, techniques, inventions, processes, or works of authorship developed, provided or created by Contractor or its employees or contractors during the course of performing work for the State (excluding any State Data or derivative works thereof and excluding any output from the [System] generated by the State's use of the [System], including without limitation, reports, graphs, charts and modified State Data, but expressly including any form templates of such reports, graphs or charts by themselves that do not include the State Data).

Title, ownership rights, and all Intellectual Property Rights in and to the [System] will remain the sole property of Contractor or its suppliers. The State acknowledges that the source code is not covered by any license hereunder and will not be provided by Contractor. Except as set forth in this Contract, no right or implied license or right of any kind is granted to the State regarding the [System] or any part thereof. Nothing in this Contract confers upon either party any right to use the other party's trade names and trademarks, except for permitted license use in accordance with this Contract. All use of such marks by either party will inure to the benefit of the owner of such marks, use of which will be subject to specifications controlled by the owner.

4.2 State Intellectual Property; User Name The State shall retain all right, title and interest in and to (i) all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder, and all other rights, tangible or intangible; and (ii) all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract (collectively, "State Intellectual Property").

Contractor may not collect, access or use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or licenses, to use State Intellectual Property for its own purposes. In no event shall the Contractor claim any security interest in State Intellectual Property.

4.3 Work Product. All Work Product shall belong exclusively to the State, with the State having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in the State by operation of law or otherwise as contemplated hereunder, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State all right, title and interest therein.

“Work Product” means any tangible or intangible ideas, inventions, improvements, modifications, discoveries, development, customization, configuration, methodologies or processes, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, work of authorship, specifications, operating instructions, procedures manuals or other documentation, technique, know-how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection), that is specifically made, conceived, discovered or reduced to practice by Contractor, either solely or jointly with others, pursuant to this Contract. Work Product does not include Contractor Intellectual Property or third party intellectual property.

To the extent delivered under this Contract, upon full payment to Contractor in accordance with Attachment B, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to all Deliverables, except to the extent they include any Contractor Intellectual Property; and (ii) grants to State a perpetual, non-exclusive, irrevocable, royalty-free license to use for State’s internal business purposes, any Contractor Intellectual Property included in the Deliverables in connection with its use of the Deliverables and, subject to the State’s obligations with respect to Confidential Information, authorize others to do the same on the State’s behalf. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Intellectual Property.

The Contractor shall not sell or copyright a Deliverable without explicit permission from the State.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor Intellectual Property or Contractor Intellectual Property developed outside of this Contract with no assistance from State.

5. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

5.1 For purposes of this Contract, confidential information will not include information or material which (a) enters the public domain (other than as a result of a breach of this Contract); (b) was in the receiving party’s possession prior to its receipt from the disclosing party; (c) is independently developed by the receiving party without the use of confidential information; (d) is obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party; or (e) is not exempt from disclosure under applicable State law.

5.2 Confidentiality of Contractor Information. The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with this Contract are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production. Contractor shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Contractor's attempts to prevent or unreasonably delay public disclosure of Contractor's information if a final decision of a court of competent jurisdiction determines that the State improperly withheld such information and that the improper withholding was based on Contractor's attempts to prevent public disclosure of Contractor's information.

The State agrees that (a) it will use the Contractor information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of Contractor information as it provides to protect its own similar confidential and proprietary information; (c) except as required by the Access to Records Act, it will not disclose such information orally or in writing to any third party unless that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the Contractor's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

Contractor may affix an appropriate legend to Contractor information that is provided under this Contract to reflect the Contractor's determination that any such information is a trade secret, proprietary information or financial information at time of delivery or disclosure.

5.3 Confidentiality of State Information. In performance of this Contract, and any exhibit or schedule hereunder, the Contractor acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. ("State Data"). In addition to the provisions of this Section, the Contractor shall comply with the requirements set forth in the State's HIPAA Business Associate Agreement attached to this Contract as Attachment E.

State Data shall not be stored, accessed from, or transferred to any location outside the United States.

Unless otherwise instructed by the State, Contractor agrees to keep confidential all State Data. The Contractor agrees that (a) it will use the State Data only as may be necessary in the course of performing duties or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information; (c) it will not publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form orally or in writing

to any third party unless it has received written approval from the State and that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the State's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Contractor will take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to only those employees on its staff who must have the information on a "need to know" basis. The Contractor shall not retain any State Data except to the extent required to perform the services under this Contract.

Contractor shall not access State user accounts or State Data, except in the course of data center operations, response to service or technical issues, as required by the express terms of this Contract, or at State's written request.

Contractor may not share State Data with its parent company or other affiliate without State's express written consent.

The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order.

6. SECURITY OF STATE INFORMATION

6.1 Security Standards. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 4 or higher) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include, but not be limited to, encryption at rest and multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

6.2 Security Breach Notice and Reporting. The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the State upon request.

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to this Contract, in the event of any actual security breach or reasonable belief of an actual security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (a “Security Breach”), the Contractor shall notify the State within 24 hours of its discovery. Contractor shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. Contractor shall analyze and document the incident and provide all notices required by applicable law.

In accordance with Section 9 V.S.A. §2435(b)(3), the Contractor shall notify the Office of the Attorney General, or, if applicable, Vermont Department of Financial Regulation (“DFR”), within fourteen (14) business days of the Contractor’s discovery of the Security Breach. The notice shall provide a preliminary description of the breach. The foregoing notice requirement shall be included in the subcontracts of any of Contractor’s subcontractors, affiliates or agents which may be “data collectors” hereunder.

The Contractor agrees to fully cooperate with the State and assume responsibility at its own expense for the following, to be determined in the sole discretion of the State: (i) notice to affected consumers if the State determines it to be appropriate under the circumstances of any particular Security Breach, in a form recommended by the AGO; and (ii) investigation and remediation associated with a Security Breach, including but not limited to, outside investigation, forensics, counsel, crisis management and credit monitoring, in the sole determination of the State.

The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time (including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes and all applicable State and federal laws, rules or regulations) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification.

In addition to any other indemnification obligations in this Contract, the Contractor shall fully indemnify and save harmless the State from any costs, loss or damage to the State resulting from a Security Breach or the unauthorized disclosure of State Data by the Contractor, its officers, agents, employees, and subcontractors.

6.3 Security Policies. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized

disclosure, and will have provided a copy of such policy to the State. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

6.4 Operations Security. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor shall cause an SSAE 18 SOC 2 Type 2 audit report to be conducted annually. The audit results and the Contractor's plan for addressing or resolution of the audit results shall be shared with the State within sixty (60) days of the Contractor's receipt of the audit results. Further, on an annual basis, within 90 days of the end of the Contractor's fiscal year, the Contractor shall transmit its annual audited financial statements to the State.

6.5 Redundant Back-Up. The Contractor shall maintain a fully redundant backup data center geographically separated from its main data center that maintains near realtime replication of data from the main data center. The Contractor's back-up policies shall be made available to the State upon request. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

6.6 Vulnerability Testing. The Contractor shall run quarterly vulnerability assessments and promptly report results to the State. Contractor shall remediate all critical issues within 90 days, all medium issues within 120 days and low issues within 180 days. Contractor shall obtain written State approval for any exceptions. Once remediation is complete, Contractor shall re-perform the test.

7. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

7.1 General Representations and Warranties. The Contractor represents, warrants and covenants that:

- (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.
- (ii) There is no outstanding litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract.
- (iii) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.
- (iv) The Contractor (a) owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the Deliverables as set forth in this Contract; (b) shall be responsible for and have full authority to license all proprietary and/or third party software modules, including algorithms and protocols, that Contractor incorporates into its product; and (c) none of the Deliverables or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.

- (v) The Contractor has adequate resources to fulfill its obligations under this Contract.
- (vi) Neither Contractor nor Contractor's subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.

7.2 Contractor's Performance Warranties. Contractor represents and warrants to the State that:

- (i) All Deliverables will be free from material errors and shall perform in accordance with the specifications therefor for a period of at least one year.
- (ii) Contractor will provide to the State commercially reasonable continuous and uninterrupted access to the Service, and will not interfere with the State's access to and use of the Service during the term of this Contract;
- (iii) The Service is compatible with and will operate successfully with any environment (including web browser and operating system) specified by the Contractor in its documentation;
- (iv) Each and all of the services shall be performed in a timely, diligent, professional and skillful manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.
- (v) All Deliverables supplied by the Contractor to the State shall be transferred free and clear of any and all restrictions on the conditions of transfer, modification, licensing, sublicensing and free and clear of any and all liens, claims, mortgages, security interests, liabilities and encumbrances or any kind.
- (vi) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any software delivered hereunder, Contractor will, upon State's request, provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.
- (vii) To the extent Contractor resells commercial hardware or software it purchased from a third party, Contractor will, to the extent it is legally able to do so, pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth herein.

7.3 Limitation on Disclaimer. The express warranties set forth in this Contract shall be in lieu of all other warranties, express or implied.

7.4 Effect of Breach of Warranty. If, at any time during the term of this Contract, software or the results of Contractor's work fail to perform according to any warranty of Contractor under

this Contract, the State shall promptly notify Contractor in writing of such alleged nonconformance, and Contractor shall, at its own expense and without limiting any other rights or remedies of the State hereunder, re-perform or replace any services that the State has determined to be unsatisfactory in its reasonable discretion. Alternatively, with State consent, the Contractor may refund of all amounts paid by State for the nonconforming deliverable or service

8. PROFESSIONAL LIABILITY AND CYBER LIABILITY INSURANCE COVERAGE

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third party coverage of \$2,000,000 per claim, \$4,000,000 aggregate; and (b) first party Breach Notification Coverage of not less than \$2,000,000.

Before commencing work on this Contract the Contractor must provide certificates of insurance to show that the foregoing minimum coverages are in effect.

9. LIMITATION OF LIABILITY.

CONTRACTOR'S LIABILITY FOR DAMAGES TO THE STATE ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT SHALL NOT EXCEED THREE TIMES THE MAXIMUM AMOUNT PAYABLE UNDER THIS CONTRACT, OR \$20,000,000, WHICHEVER IS GREATER. LIMITS OF LIABILITY FOR STATE CLAIMS SHALL NOT APPLY TO STATE CLAIMS ARISING OUT OF: (A) CONTRACTOR'S OBLIGATION TO INDEMNIFY THE STATE; (B) CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS TO THE STATE; (C) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; (D) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT; OR (E) VIOLATIONS OF THE STATE OF VERMONT FRAUDULENT CLAIMS ACT. IN NO EVENT SHALL THIS LIMIT OF LIABILITY BE CONSTRUED TO LIMIT CONTRACTOR'S LIABILITY FOR THIRD PARTY CLAIMS AGAINST THE CONTRACTOR WHICH MAY ARISE OUT OF CONTRACTOR'S ACTS OR OMISSIONS IN THE PERFORMANCE OF THIS CONTRACT.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, DAMAGES WHICH ARE UNFORESEEABLE TO THE PARTIES AT THE TIME OF CONTRACTING, DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY, SUCH AS LOSS OF ANTICIPATED BUSINESS, OR LOST PROFITS, INCOME, GOODWILL, OR REVENUE IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT.

The provisions of this Section shall apply notwithstanding any other provisions of this Contract or any other agreement.

10. TRADE SECRET, PATENT AND COPYRIGHT INFRINGEMENT

The State shall not be deemed to waive any of its rights or remedies at law or in equity in the event of Contractor's trade secret, patent and/or copyright infringement.

11 REMEDIES FOR DEFAULT; NO WAIVER OF REMEDIES

In the event either party is in default under this Contract, the non-defaulting party may, at its option, pursue any or all of the remedies available to it under this Contract, including termination for cause, and at law or in equity.

No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such right, power or remedy, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

12 NO ASSUMPTION OF COSTS

Any requirement that the State defend or indemnify Contractor or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or license verification costs of Contractor, is hereby deleted from the Contractor Documents.

13 TERMINATION

Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to the State all State information, State Intellectual Property or State Data (including without limitation any Deliverables for which State has made payment in whole or in part) ("State Materials"), that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such State property is expressed or embodied at that time.

In the event the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Contractor shall immediately return all State Materials to State control; including, but not limited to, making all necessary access to applicable remote systems available to the State for purposes of downloading all State Materials.

Contractor shall reasonably cooperate with other parties in connection with all services to be delivered under this Contract, including without limitation any successor provider to whom State Materials are to be transferred in connection with termination. Contractor shall assist the State in exporting and extracting the State Materials, in a format usable without the use of the Services and as agreed to by State, at no additional cost.

Any transition services requested by State involving additional knowledge transfer and support may be subject to a contract amendment for a fixed fee or at rates to be mutually agreed upon by the parties.

If the State determines in its sole discretion that a documented transition plan is necessary, then no later than sixty (60) days prior to termination, Contractor and the State shall mutually prepare a Transition Plan identifying transition services to be provided.

14 ACCESS TO STATE DATA:

The State may import or export State Materials in part or in whole at its sole discretion at any time (24 hours a day, seven (7) days a week, 365 days a year), during the term of this Contract or for up to three (3) months after the Term (so long as the State Materials remain in the Contractor's

possession) without interference from the Contractor in a format usable without the Service and in an agreed-upon file format and medium at no additional cost to the State.

The Contractor must allow the State access to information such as system logs and latency statistics that affect its State Materials and or processes.

The Contractor's policies regarding the retrieval of data upon the termination of services have been made available to the State upon execution of this Contract under separate cover. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

15 AUDIT RIGHTS

Contractor will maintain and cause its permitted contractors to maintain a complete audit trail of all transactions and activities, financial and non-financial, in connection with this Contract. Contractor will provide to the State, its internal or external auditors, clients, inspectors, regulators and other designated representatives, at reasonable times (and in the case of State or federal regulators, at any time required by such regulators) access to Contractor personnel and to any and all Contractor facilities or where the required information, data and records are maintained, for the purpose of performing audits and inspections (including unannounced and random audits) of Contractor and/or Contractor personnel and/or any or all of the records, data and information applicable to this Contract.

At a minimum, such audits, inspections and access shall be conducted to the extent permitted or required by any laws applicable to the State or Contractor (or such higher or more rigorous standards, if any, as State or Contractor applies to its own similar businesses, operations or activities), to (i) verify the accuracy of charges and invoices; (ii) verify the integrity of State Data and examine the systems that process, store, maintain, support and transmit that data; (iii) examine and verify Contractor's and/or its permitted contractors' operations and security procedures and controls; (iv) examine and verify Contractor's and/or its permitted contractors' disaster recovery planning and testing, business resumption and continuity planning and testing, contingency arrangements and insurance coverage; and (v) examine Contractor's and/or its permitted contractors' performance of the Services including audits of: (1) practices and procedures; (2) systems, communications and information technology; (3) general controls and physical and data/information security practices and procedures; (4) quality initiatives and quality assurance, (5) contingency and continuity planning, disaster recovery and back-up procedures for processes, resources and data; (6) Contractor's and/or its permitted contractors' efficiency and costs in performing Services; (7) compliance with the terms of this Contract and applicable laws, and (9) any other matters reasonably requested by the State. Contractor shall provide and cause its permitted contractors to provide full cooperation to such auditors, inspectors, regulators and representatives in connection with audit functions and with regard to examinations by regulatory authorities, including the installation and operation of audit software.

16 DESTRUCTION OF STATE DATA

At any time during the term of this Contract within (i) thirty days of the State's written request or (ii) [three (3) months] of termination or expiration of this Contract for any reason, and in any event after the State has had an opportunity to export and recover the State Materials, Contractor shall at its own expense securely destroy and erase from all systems it directly or indirectly uses or controls all tangible or intangible forms of the State Materials, in whole or in part, and all copies

thereof except such records as are required by law. The destruction of State Data and State Intellectual Property shall be performed according to National Institute of Standards and Technology (NIST) approved methods. Contractor shall certify in writing to the State that such State Data has been disposed of securely. To the extent that any applicable law prevents Contractor from destroying or erasing State Materials as set forth herein, Contractor shall retain, in its then current state, all such State Materials then within its right of control or possession in accordance with the confidentiality, security and other requirements of this Contract, and perform its obligations under this section as soon as such law no longer prevents it from doing so.

Further, upon the relocation of State Data, Contractor shall securely dispose of such copies from the former data location and certify in writing to the State that such State Data has been disposed of securely. Contractor shall comply with all reasonable directions provided by the State with respect to the disposal of State Data.

17 CONTRACTOR BANKRUPTCY.

Contractor acknowledges that if Contractor, as a debtor in possession, or a trustee in bankruptcy in a case under Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"), rejects this Contract, the State may elect to retain its rights under this Contract as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the State to Contractor or the Bankruptcy Trustee, Contractor or such Bankruptcy Trustee shall not interfere with the rights of the State as provided in this Contract, including the right to obtain the State Intellectual Property.

18 SOFTWARE LICENSEE COMPLIANCE REPORT.

In lieu of any requirement that may be in a Contractor Document that the State provide the Contractor with access to its System for the purpose of determining State compliance with the terms of the Contractor Document, upon request and not more frequently than annually, the State will provide Contractor with a certified report concerning the State's use of any software licensed for State use pursuant this Contract. The parties agree that any non-compliance indicated by the report shall not constitute infringement of the licensor's intellectual property rights, and that settlement payment mutually agreeable to the parties shall be the exclusive remedy for any such non-compliance.

19 SOV Cybersecurity Standard Update 2023-01: Contractor confirms that all products and services provided to or for the use of the State under this Agreement shall be in compliance with *State of Vermont Cybersecurity Standard 23-01*, which prohibits the use of certain branded products in State information systems or any vendor system that is supporting State information systems, and is available on-line at:

<https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

ATTACHMENT E - BUSINESS ASSOCIATE AGREEMENT**SOV CONTRACTOR/GRANTEE/BUSINESS ASSOCIATE: WELLPATH, LLC.****SOV CONTRACT NO. 45473 CONTRACT EFFECTIVE DATE: JULY 1, 2023**

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services, operating by and through its Department of Corrections (“Covered Entity”) and Party identified in this Agreement as Contractor or Grantee above (“Business Associate”). This Agreement supplements and is made a part of the contract or grant (“Contract or Grant”) to which it is attached.

Covered Entity and Business Associate enter into this Agreement to comply with the standards promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 (“Privacy Rule”), and the Security Standards, at 45 CFR Parts 160 and 164 (“Security Rule”), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

The parties agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations. Terms defined in this Agreement are italicized. Unless otherwise specified, when used in this Agreement, defined terms used in the singular shall be understood if appropriate in their context to include the plural when applicable.

“*Agent*” means an *Individual* acting within the scope of the agency of the *Business Associate*, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c) and includes Workforce members and *Subcontractors*.

“*Breach*” means the acquisition, Access, Use or Disclosure of *Protected Health Information (PHI)* which compromises the Security or privacy of the *PHI*, except as excluded in the definition of *Breach* in 45 CFR § 164.402.

“*Business Associate*” shall have the meaning given for “Business Associate” in 45 CFR § 160.103 and means Contractor or Grantee and includes its Workforce, *Agents* and *Subcontractors*.

“*Electronic PHI*” shall mean *PHI* created, received, maintained or transmitted electronically in accordance with 45 CFR § 160.103.

“*Individual*” includes a Person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

“*Protected Health Information*” (“*PHI*”) shall have the meaning given in 45 CFR § 160.103, limited to the *PHI* created or received by *Business Associate* from or on behalf of Covered Entity.

“*Required by Law*” means a mandate contained in law that compels an entity to make a use or disclosure of *PHI* and that is enforceable in a court of law and shall have the meaning given in 45 CFR § 164.103.

“*Report*” means submissions required by this Agreement as provided in section 2.3.

“*Security Incident*” means the attempted or successful unauthorized Access, Use, Disclosure, modification, or destruction of Information or interference with system operations in an Information System relating to *PHI* in accordance with 45 CFR § 164.304.

“*Services*” includes all work performed by the *Business Associate* for or on behalf of Covered Entity that requires the Use and/or Disclosure of *PHI* to perform a *Business Associate* function described in 45 CFR § 160.103.

“*Subcontractor*” means a Person to whom *Business Associate* delegates a function, activity, or service, other than in the capacity of a member of the workforce of such *Business Associate*.

“*Successful Security Incident*” shall mean a *Security Incident* that results in the unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System.

“*Unsuccessful Security Incident*” shall mean a *Security Incident* such as routine occurrences that do not result in unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System, such as: (i) unsuccessful attempts to penetrate computer networks or services maintained by *Business Associate*; and (ii) immaterial incidents such as pings and other broadcast attacks on *Business Associate*'s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above with respect to *Business Associate*'s Information System.

“*Targeted Unsuccessful Security Incident*” means an *Unsuccessful Security Incident* that appears to be an attempt to obtain unauthorized Access, Use, Disclosure, modification or destruction of the Covered Entity's *Electronic PHI*.

2. Contact Information for Privacy and Security Officers and Reports.

2.1 *Business Associate* shall provide, within ten (10) days of the execution of this Agreement, written notice to the Contract or Grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer of the *Business Associate*. This information must be updated by *Business Associate* any time these contacts change.

2.2 Covered Entity's HIPAA Privacy Officer and HIPAA Security Officer contact information is posted at: <https://humanservices.vermont.gov/rules-policies/health-insurance-portability-and-accountability-act-hipaa>

2.3 *Business Associate* shall submit all *Reports* required by this Agreement to the following email address: AHS.PrivacyAndSecurity@vermont.gov

3. Permitted and Required Uses/Disclosures of PHI.

3.1 Subject to the terms in this Agreement, *Business Associate* may Use or Disclose *PHI* to perform *Services*, as specified in the Contract or Grant. Such Uses and Disclosures are limited to the minimum necessary to provide the *Services*. *Business Associate* shall not Use or Disclose *PHI* in any manner that would constitute a violation of the Privacy Rule if Used or Disclosed by Covered Entity in that manner. *Business Associate* may not Use or Disclose *PHI* other than as permitted or required by this Agreement or as *Required by Law* and only in compliance with applicable laws and regulations.

3.2 *Business Associate* may make *PHI* available to its Workforce, *Agent* and *Subcontractor* who need Access to perform *Services* as permitted by this Agreement, provided that *Business Associate* makes them aware of the Use and Disclosure restrictions in this Agreement and binds them to comply with such restrictions.

3.3 *Business Associate* shall be directly liable under HIPAA for impermissible Uses and Disclosures of *PHI*.

4. **Business Activities.** *Business Associate* may Use *PHI* if necessary for *Business Associate's* proper management and administration or to carry out its legal responsibilities. *Business Associate* may Disclose *PHI* for *Business Associate's* proper management and administration or to carry out its legal responsibilities if a Disclosure is *Required by Law* or if *Business Associate* obtains reasonable written assurances via a written agreement from the Person to whom the information is to be Disclosed that such *PHI* shall remain confidential and be Used or further Disclosed only as *Required by Law* or for the purpose for which it was Disclosed to the Person, and the Agreement requires the Person to notify *Business Associate*, within five (5) business days, in writing of any *Breach* of Unsecured *PHI* of which it is aware. Such Uses and Disclosures of *PHI* must be of the minimum amount necessary to accomplish such purposes.

5. **Electronic PHI Security Rule Obligations.**

5.1 With respect to *Electronic PHI*, *Business Associate* shall:

a) Implement and use Administrative, Physical, and Technical Safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312;

b) Identify in writing upon request from Covered Entity all the safeguards that it uses to protect such *Electronic PHI*;

c) Prior to any Use or Disclosure of *Electronic PHI* by an *Agent* or *Subcontractor*, ensure that any *Agent* or *Subcontractor* to whom it provides *Electronic PHI* agrees in writing to implement and use Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of *Electronic PHI*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *Electronic PHI*, and be provided to Covered Entity upon request;

d) Report in writing to Covered Entity any *Successful Security Incident* or *Targeted Unsuccessful Security Incident* as soon as it becomes aware of such incident and in no event later than five (5) business days after such awareness. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available;

e) Following such *Report*, provide Covered Entity with the information necessary for Covered Entity to investigate any such incident; and

f) Continue to provide to Covered Entity information concerning the incident as it becomes available to it.

5.2 Reporting *Unsuccessful Security Incidents*. *Business Associate* shall provide Covered Entity upon written request a *Report* that: (a) identifies the categories of *Unsuccessful Security Incidents*; (b) indicates whether *Business Associate* believes its current defensive security measures are adequate to address all *Unsuccessful Security Incidents*, given the scope and nature of such attempts; and (c) if the security measures are not adequate, the measures *Business Associate* will implement to address the security inadequacies.

5.3 *Business Associate* shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

6. **Reporting and Documenting Breaches.**

6.1 *Business Associate* shall *Report* to Covered Entity any *Breach* of Unsecured *PHI* as soon as it, or any Person to whom *PHI* is disclosed under this Agreement, becomes aware of any such

Breach, and in no event later than five (5) business days after such awareness, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available.

6.2 Following the *Report* described in 6.1, *Business Associate* shall conduct a risk assessment and provide it to Covered Entity with a summary of the event. *Business Associate* shall provide Covered Entity with the names of any *Individual* whose Unsecured *PHI* has been, or is reasonably believed to have been, the subject of the *Breach* and any other available information that is required to be given to the affected *Individual*, as set forth in 45 CFR § 164.404(c). Upon request by Covered Entity, *Business Associate* shall provide information necessary for Covered Entity to investigate the impermissible Use or Disclosure. *Business Associate* shall continue to provide to Covered Entity information concerning the *Breach* as it becomes available.

6.3 When *Business Associate* determines that an impermissible acquisition, Access, Use or Disclosure of *PHI* for which it is responsible is not a *Breach*, and therefore does not necessitate notice to the impacted *Individual*, it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). *Business Associate* shall make its risk assessment available to Covered Entity upon request. It shall include 1) the name of the person making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the *PHI* had been compromised.

7. **Mitigation and Corrective Action.** *Business Associate* shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible Use or Disclosure of *PHI*, even if the impermissible Use or Disclosure does not constitute a *Breach*. *Business Associate* shall draft and carry out a plan of corrective action to address any incident of impermissible Use or Disclosure of *PHI*. *Business Associate* shall make its mitigation and corrective action plans available to Covered Entity upon request.

8. **Providing Notice of Breaches.**

8.1 If Covered Entity determines that a *Breach* of *PHI* for which *Business Associate* was responsible, and if requested by Covered Entity, *Business Associate* shall provide notice to the *Individual* whose *PHI* has been the subject of the *Breach*. When so requested, *Business Associate* shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. *Business Associate* shall be responsible for the cost of notice and related remedies.

8.2 The notice to affected *Individuals* shall be provided as soon as reasonably possible and in no case later than sixty (60) calendar days after *Business Associate* reported the *Breach* to Covered Entity.

8.3 The notice to affected *Individuals* shall be written in plain language and shall include, to the extent possible: 1) a brief description of what happened; 2) a description of the types of Unsecured *PHI* that were involved in the *Breach*; 3) any steps *Individuals* can take to protect themselves from potential harm resulting from the *Breach*; 4) a brief description of what the *Business Associate* is doing to investigate the *Breach* to mitigate harm to *Individuals* and to protect against further *Breaches*; and 5) contact procedures for *Individuals* to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.4 *Business Associate* shall notify *Individuals* of *Breaches* as specified in 45 CFR § 164.404(d) (methods of *Individual* notice). In addition, when a *Breach* involves more than 500 residents of Vermont, *Business Associate* shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

9. Agreements with Subcontractors. *Business Associate* shall enter into a Business Associate Agreement with any *Subcontractor* to whom it provides *PHI* to require compliance with HIPAA and to ensure *Business Associate* and *Subcontractor* comply with the terms and conditions of this Agreement. *Business Associate* must enter into such written agreement before any Use by or Disclosure of *PHI* to such *Subcontractor*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *PHI*. *Business Associate* shall provide a copy of the written agreement it enters into with a *Subcontractor* to Covered Entity upon request. *Business Associate* may not make any Disclosure of *PHI* to any *Subcontractor* without prior written consent of Covered Entity.

10. Access to PHI. *Business Associate* shall provide access to *PHI* in a Designated Record Set to Covered Entity or as directed by Covered Entity to an *Individual* to meet the requirements under 45 CFR § 164.524. *Business Associate* shall provide such access in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for Access to *PHI* that *Business Associate* directly receives from an *Individual*.

11. Amendment of PHI. *Business Associate* shall make any amendments to *PHI* in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an *Individual*. *Business Associate* shall make such amendments in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for amendment to *PHI* that *Business Associate* directly receives from an *Individual*.

12. Accounting of Disclosures. *Business Associate* shall document Disclosures of *PHI* and all 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. *Business Associate* shall provide such information to Covered Entity or as directed by Covered Entity to an *Individual*, to permit Covered Entity to respond to an accounting request. *Business Associate* shall provide such information in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any accounting request that *Business Associate* directly receives from an *Individual*.

13. Books and Records. Subject to the attorney-client and other applicable legal privileges, *Business Associate* shall make its internal practices, books, and records (including policies and procedures and *PHI*) relating to the Use and Disclosure of *PHI* available to the Secretary of Health and Human Services (HHS) in the time and manner designated by the Secretary. *Business Associate* shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether *Business Associate* is in compliance with this Agreement.

14. Termination.

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all the *PHI* is destroyed or returned to Covered Entity subject to Section 18.8.

14.2 If *Business Associate* fails to comply with any material term of this Agreement, Covered Entity may provide an opportunity for *Business Associate* to cure. If *Business Associate* does not cure within the time specified by Covered Entity or if Covered Entity believes that cure is not reasonably possible, Covered Entity may immediately terminate the Contract or Grant without incurring liability or penalty for such termination. If neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary of HHS. Covered Entity has the right to seek to cure such failure by *Business Associate*. Regardless of whether Covered Entity cures, it retains any right or remedy available at law, in equity, or under the Contract or Grant and *Business Associate* retains its responsibility for such failure.

15. Return/Destruction of PHI.

15.1 *Business Associate* in connection with the expiration or termination of the Contract or Grant shall return or destroy, at the discretion of the Covered Entity, *PHI* that *Business Associate* still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. *Business Associate* shall not retain any copies of *PHI*. *Business Associate* shall certify in writing and report to Covered Entity (1) when all *PHI* has been returned or destroyed and (2) that *Business Associate* does not continue to maintain any *PHI*. *Business Associate* is to provide this certification during this thirty (30) day period.

15.2 *Business Associate* shall report to Covered Entity any conditions that *Business Associate* believes make the return or destruction of *PHI* infeasible. *Business Associate* shall extend the protections of this Agreement to such *PHI* and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible for so long as *Business Associate* maintains such *PHI*.

16. Penalties. *Business Associate* understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of *PHI* and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations.

17. Training. *Business Associate* understands its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement. If requested by Covered Entity, *Business Associate* shall participate in Covered Entity's training regarding the Use, Confidentiality, and Security of *PHI*; however, participation in such training shall not supplant nor relieve *Business Associate* of its obligations under this Agreement to independently assure compliance with the law and this Agreement.

18. Miscellaneous.

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract or Grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the Contract or Grant continue in effect.

18.2 Each party shall cooperate with the other party to amend this Agreement from time to time as is necessary for such party to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA. This Agreement may not be amended, except by a writing signed by all parties hereto.

18.3 Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule, Security Rule, and HITECH) in construing the meaning and effect of this Agreement.

18.5 *Business Associate* shall not have or claim any ownership of *PHI*.

18.6 *Business Associate* shall abide by the terms and conditions of this Agreement with respect to all *PHI* even if some of that information relates to specific services for which *Business Associate* may not be a "*Business Associate*" of Covered Entity under the Privacy Rule.

18.7 *Business Associate* is prohibited from directly or indirectly receiving any remuneration in exchange for an *Individual's PHI*. *Business Associate* will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. *Reports* or data containing *PHI* may not be sold without Covered Entity's or the affected *Individual's* written consent.

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for *Business Associate* to return or destroy *PHI* as provided in Section 14.2 and (b) the obligation of *Business Associate* to provide an accounting of disclosures as set forth in Section 12 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

Rev. 05/22/2020

ATTACHMENT F – AHS CUSTOMARY PROVISIONS
AGENCY OF HUMAN SERVICES’ CUSTOMARY CONTRACT/GRANT PROVISIONS

1. **Definitions:** For purposes of this Attachment F, the term “Agreement” shall mean the form of the contract or grant, with all of its parts, into which this Attachment F is incorporated. The meaning of the term “Party” when used in this Attachment F shall mean any named party to this Agreement *other than* the State of Vermont, the Agency of Human Services (AHS) and any of the departments, boards, offices and business units named in this Agreement. As such, the term “Party” shall mean, when used in this Attachment F, the Contractor or Grantee with whom the State of Vermont is executing this Agreement. If Party, when permitted to do so under this Agreement, seeks by way of any subcontract, sub-grant or other form of provider agreement to employ any other person or entity to perform any of the obligations of Party under this Agreement, Party shall be obligated to ensure that all terms of this Attachment F are followed. As such, the term “Party” as used herein shall also be construed as applicable to, and describing the obligations of, any subcontractor, sub-recipient or sub-grantee of this Agreement. Any such use or construction of the term “Party” shall not, however, give any subcontractor, sub-recipient or sub-grantee any substantive right in this Agreement without an express written agreement to that effect by the State of Vermont.
2. **Agency of Human Services:** The Agency of Human Services is responsible for overseeing all contracts and grants entered by any of its departments, boards, offices and business units, however denominated. The Agency of Human Services, through the business office of the Office of the Secretary, and through its Field Services Directors, will share with any named AHS-associated party to this Agreement oversight, monitoring and enforcement responsibilities. Party agrees to cooperate with both the named AHS-associated party to this contract and with the Agency of Human Services itself with respect to the resolution of any issues relating to the performance and interpretation of this Agreement, payment matters and legal compliance.
3. **Medicaid Program Parties** (*applicable to any Party providing services and supports paid for under Vermont’s Medicaid program and Vermont’s Global Commitment to Health Waiver*):

Inspection and Retention of Records: In addition to any other requirement under this Agreement or at law, Party must fulfill all state and federal legal requirements, and will comply with all requests appropriate to enable the Agency of Human Services, the U.S. Department of Health and Human Services (along with its Inspector General and the Centers for Medicare and Medicaid Services), the Comptroller General, the Government Accounting Office, or any of their designees: (i) to evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed under this Agreement; and (ii) to inspect and audit any records, financial data, contracts, computer or other electronic systems of Party relating to the performance of services under Vermont’s Medicaid program and Vermont’s Global Commitment to Health Waiver. Party will retain for ten years all documents required to be retained pursuant to 42 CFR 438.3(u).

Subcontracting for Medicaid Services: Notwithstanding any permitted subcontracting of services to be performed under this Agreement, Party shall remain responsible for ensuring that this Agreement is fully performed according to its terms, that subcontractor remains in compliance with the terms hereof, and that subcontractor complies with all state and federal laws and regulations relating to the Medicaid program in Vermont. Subcontracts, and any service provider agreements entered into by Party in connection with the performance of this Agreement, must clearly specify in writing the responsibilities of the subcontractor or other service provider and Party must retain the authority to revoke its subcontract or service provider agreement or to impose other sanctions if the performance of the subcontractor or service provider is inadequate or if its performance deviates from any requirement of

this Agreement. Party shall make available on request all contracts, subcontracts and service provider agreements between the Party, subcontractors and other service providers to the Agency of Human Services and any of its departments as well as to the Center for Medicare and Medicaid Services.

Medicaid Notification of Termination Requirements: Party shall follow the Department of Vermont Health Access Managed-Care-Organization enrollee-notification requirements, to include the requirement that Party provide timely notice of any termination of its practice.

Encounter Data: Party shall provide encounter data to the Agency of Human Services and/or its departments and ensure further that the data and services provided can be linked to and supported by enrollee eligibility files maintained by the State.

Federal Medicaid System Security Requirements Compliance: Party shall provide a security plan, risk assessment, and security controls review document within three months of the start date of this Agreement (and update it annually thereafter) in order to support audit compliance with 45 CFR 95.621 subpart F, *ADP System Security Requirements and Review Process*.

4. **Workplace Violence Prevention and Crisis Response** (*applicable to any Party and any subcontractors and sub-grantees whose employees or other service providers deliver social or mental health services directly to individual recipients of such services*):

Party shall establish a written workplace violence prevention and crisis response policy meeting the requirements of Act 109 (2016), 33 VSA §8201(b), for the benefit of employees delivering direct social or mental health services. Party shall, in preparing its policy, consult with the guidelines promulgated by the U.S. Occupational Safety and Health Administration for *Preventing Workplace Violence for Healthcare and Social Services Workers*, as those guidelines may from time to time be amended.

Party, through its violence protection and crisis response committee, shall evaluate the efficacy of its policy, and update the policy as appropriate, at least annually. The policy and any written evaluations thereof shall be provided to employees delivering direct social or mental health services.

Party will ensure that any subcontractor and sub-grantee who hires employees (or contracts with service providers) who deliver social or mental health services directly to individual recipients of such services, complies with all requirements of this Section.

5. **Non-Discrimination:**

Party shall not discriminate, and will prohibit its employees, agents, subcontractors, sub-grantees and other service providers from discrimination, on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, and on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. Party shall not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity as provided by Title 9 V.S.A. Chapter 139.

No person shall on the grounds of religion or on the grounds of sex (including, on the grounds that a woman is pregnant), be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by State of Vermont and/or federal funds.

Party further shall comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, requiring that contractors and subcontractors receiving federal funds assure that persons with limited English proficiency can meaningfully access services. To the extent Party provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services, such individuals cannot be required to pay for such services.

6. **Employees and Independent Contractors:**

Party agrees that it shall comply with the laws of the State of Vermont with respect to the appropriate classification of its workers and service providers as “employees” and “independent contractors” for all purposes, to include for purposes related to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party agrees to ensure that all of its subcontractors or sub-grantees also remain in legal compliance as to the appropriate classification of “workers” and “independent contractors” relating to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party will on request provide to the Agency of Human Services information pertaining to the classification of its employees to include the basis for the classification. Failure to comply with these obligations may result in termination of this Agreement.

7. **Data Protection and Privacy:**

Protected Health Information: Party shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this Agreement. Party shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

Substance Abuse Treatment Information: Substance abuse treatment information shall be maintained in compliance with 42 C.F.R. Part 2 if the Party or subcontractor(s) are Part 2 covered programs, or if substance abuse treatment information is received from a Part 2 covered program by the Party or subcontractor(s).

Protection of Personal Information: Party agrees to comply with all applicable state and federal statutes to assure protection and security of personal information, or of any personally identifiable information (PII), including the Security Breach Notice Act, 9 V.S.A. § 2435, the Social Security Number Protection Act, 9 V.S.A. § 2440, the Document Safe Destruction Act, 9 V.S.A. § 2445 and 45 CFR 155.260. As used here, PII shall include any information, in any medium, including electronic, which can be used to distinguish or trace an individual’s identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with any other personal or identifiable information that is linked or linkable to a specific person, such as date and place of birth, mother’s maiden name, etc.

Other Confidential Consumer Information: Party agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to and uses of personal information relating to any beneficiary or recipient of goods, services or other forms of support. Party further agrees to comply with any applicable Vermont State Statute and other regulations respecting the right to individual privacy. Party shall ensure that all of its employees, subcontractors and other service providers performing services under this agreement understand and preserve the sensitive, confidential and non-public nature of information to which they may have access.

Data Breaches: Party shall report to AHS, through its Chief Information Officer (CIO), any impermissible use or disclosure that compromises the security, confidentiality or privacy of any form

of protected personal information identified above within 24 hours of the discovery of the breach. Party shall in addition comply with any other data breach notification requirements required under federal or state law.

8. **Abuse and Neglect of Children and Vulnerable Adults:**

Abuse Registry. Party agrees not to employ any individual, to use any volunteer or other service provider, or to otherwise provide reimbursement to any individual who in the performance of services connected with this agreement provides care, custody, treatment, transportation, or supervision to children or to vulnerable adults if there has been a substantiation of abuse or neglect or exploitation involving that individual. Party is responsible for confirming as to each individual having such contact with children or vulnerable adults the non-existence of a substantiated allegation of abuse, neglect or exploitation by verifying that fact though (a) as to vulnerable adults, the Adult Abuse Registry maintained by the Department of Disabilities, Aging and Independent Living and (b) as to children, the Central Child Protection Registry (unless the Party holds a valid child care license or registration from the Division of Child Development, Department for Children and Families). See 33 V.S.A. §4919(a)(3) and 33 V.S.A. §6911(c)(3).

Reporting of Abuse, Neglect, or Exploitation. Consistent with provisions of 33 V.S.A. §4913(a) and §6903, Party and any of its agents or employees who, in the performance of services connected with this agreement, (a) is a caregiver or has any other contact with clients and (b) has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall: as to children, make a report containing the information required by 33 V.S.A. §4914 to the Commissioner of the Department for Children and Families within 24 hours; or, as to a vulnerable adult, make a report containing the information required by 33 V.S.A. §6904 to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. Party will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

9. **Information Technology Systems:**

Computing and Communication: Party shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Party as part of this agreement. Options include, but are not limited to:

1. Party's provision of certified computing equipment, peripherals and mobile devices, on a separate Party's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

Intellectual Property/Work Product Ownership: All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement -- including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes

and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement, or are a result of the services required under this grant -- shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30-days notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered "work for hire," i.e., the State, not the Party (or subcontractor or sub-grantee), shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

Party shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State of Vermont.

If Party is operating a system or application on behalf of the State of Vermont, Party shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Party's materials.

Party acknowledges and agrees that should this agreement be in support of the State's implementation of the Patient Protection and Affordable Care Act of 2010, Party is subject to the certain property rights provisions of the Code of Federal Regulations and a Grant from the Department of Health and Human Services, Centers for Medicare & Medicaid Services. Such agreement will be subject to, and incorporates here by reference, 45 CFR 74.36, 45 CFR 92.34 and 45 CFR 95.617 governing rights to intangible property.

Security and Data Transfers: Party shall comply with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. The State will advise the Party of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Party to implement any required.

Party will ensure the physical and data security associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this Agreement. Party will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. Party will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, Party shall securely delete data (including archival backups) from Party's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

Party, in the event of a data breach, shall comply with the terms of Section 7 above.

10. **Other Provisions:**

Environmental Tobacco Smoke. Public Law 103-227 (also known as the Pro-Children Act of 1994) and Vermont's Act 135 (2014) (An act relating to smoking in lodging establishments, hospitals, and child care facilities, and on State lands) restrict the use of tobacco products in certain settings. Party shall ensure that no person is permitted: (i) to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time; (ii) to use tobacco products or tobacco substitutes on the premises, both indoor and in any outdoor area designated for child care, health or day care services, kindergarten, pre-kindergarten, elementary, or secondary education or library services; and (iii) to use tobacco

products or tobacco substitutes on the premises of a licensed or registered family child care home while children are present and in care. Party will refrain from promoting the use of tobacco products for all clients and from making tobacco products available to minors.

Failure to comply with the provisions of the federal law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. The federal Pro-Children Act of 1994, however, does not apply to portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

2-1-1 Database: If Party provides health or human services within Vermont, or if Party provides such services near the Vermont border readily accessible to residents of Vermont, Party shall adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211 (Vermont 211), and will provide to Vermont 211 relevant descriptive information regarding its agency, programs and/or contact information as well as accurate and up to date information to its database as requested. The "Inclusion/Exclusion" policy can be found at www.vermont211.org.

Voter Registration: When designated by the Secretary of State, Party agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.

Drug Free Workplace Act: Party will assure a drug-free workplace in accordance with 45 CFR Part 76.

Lobbying: No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.