

STANDARD CONTRACT FOR SERVICES

1. **Parties.** This is a contract for services between the State of Vermont, Department of Corrections (hereinafter called "State"), and CoreCivic, with a principal place of business in Nashville, TN, (hereinafter called "Contractor"). Contractor's form of business organization is a Corporation. 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 providing adult male inmates with housing, necessary care and treatment and inmate rights in accordance with ACA Fourth Edition Standards. 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 \$18,394,723.00.

4. **Contract Term.** The period of Contractor's performance shall begin on October 1, 2018 and end on September 30, 2020. The Contract may be extended for one additional two-year period upon mutual agreement of the parties.

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.** This Contract may be unilaterally terminated, with or without cause, by one hundred eighty (180) days' notice by either party, mailed to the other party by registered U.S. mail, return receipt requested or served directly by personal delivery. Any notice so mailed and any notice served by personal delivery shall be deemed delivered and effective upon receipt or upon attempted delivery. This method of notification shall be used in all instances, except for emergency situations when immediate notification is required.

8. **Attachments.** This contract consists of 63 pages including the following attachments which are incorporated herein:

Attachment A – Specification of Work to be Performed

Attachment B - Payment Provisions

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

Attachment D - Other Terms and Conditions for Information Technology Contracts

Attachment E – Business Associate Agreement (if any)

Attachment F – "AHS Customary Contract Provisions"

9. *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 Other Terms and Conditions for Information Technology Contracts
- (3) Attachment C (Standard State Provisions for Contracts and Grants)
- (4) Attachment A
- (5) Attachment B
- (6) Attachment E
- (7) Attachment F

**ATTACHMENT A
INMATE HOUSING CONTRACT**

1. DESCRIPTION OF SERVICES

1.1 FACILITY

Except as otherwise provide herein, Contractor shall house the VTDOC ("State") inmates at Contractor's Tallahatchie County Correctional Facility ("Facility") located in Tutwiler, MS. Contractor shall house all State general population inmates together and Contractor shall keep all State general population inmates housed separate from other populations and jurisdictions to include recreation areas. State inmates may commingle with other populations and jurisdictions in programs or other common areas of the Facility.

At the time of the signing of this Contract, Contractor shall certify in writing that the Facility is accredited by the American Correctional Association (ACA) and Contractor shall maintain such accreditation throughout the term of this Contract. Contractor shall obtain and/or be actively working towards NCCHC accreditation within one year of signing this Contract for the Facility and shall maintain accreditation, once obtained, throughout the term of this Contract.

Contractor shall maintain staffing levels at the Facility in accordance with ACA standards and in sufficient numbers and rank to maintain the safety of the public, staff and inmates. The State shall be notified whenever the Contractor revises the staffing guidelines in inmate housing units holding State inmates during the term of the Contract.

State shall have access to up to 350 beds (Minimum, Medium and Close custody) at the Facility. Contractor shall not, at any time, utilize other facilities without State permission. Contractor shall allow the State to engage in an on-site visit of any facility proposed for utilization prior to State's determining whether to grant permission. Any utilization of facilities other than the Facility shall be at the same per diem rate as that of the Facility. Any utilization of facility beds in excess of 350 shall be at the same per diem rate as the first 350 beds.

Contractor shall provide necessary care and treatment, to include food, clothing, appropriate housing, education, training, work programs, access to courts/Law Library and comprehensive healthcare services (routine, acute, chronic and emergency medical care consistent with the requirements of ACA standards, NCCHC standards, and constitutionally appropriate guidelines). The Contractor shall provide safe, supervised confinement in the form of direct supervision, and maintain proper discipline and control. The Contractor shall comply with applicable orders of the courts in the State of Vermont and otherwise comply with applicable laws.

Contractor shall provide for inmate rights in accordance with ACA Fourth Edition Standards. The Contractor shall provide to each inmate upon arrival an Inmate Handbook (orientation guide) that includes, but is not limited to, information on: rules and procedures, penalties and offenses, disciplinary procedures, access to courts, law library, attorney access, mail, visiting, telephone, grievances, PREA information, indigent criteria, medical care, religious programs, educational programs, work assignments and pay scale. This Inmate Handbook shall be updated annually, and a copy provided to the State.

2. TRAINING

State shall provide training, follow-up and auditing to Contractor in the Incident Reporting, Due Process and the Grievance processes. Contractor shall identify staff to travel to Vermont to attend training on these processes which will be instructed by VTDOC.

The first training shall include curriculum, classroom and practical applications for Due Process Certification. The training shall occur between September 10, 2018 and September 12, 2018. This training will include participation in actual hearings within a VTDOC facility for certification purposes. Upon completion and certification, Contractors staff shall be authorized to conduct Due Process hearings.

The second training shall be a training for trainers and shall include curriculum, classroom and practical applications for Incident Reporting and the Grievance process. The training shall occur on September 13, 2018. Upon completion, Contractors trainers shall be responsible to instruct and support Contractors staff in the use of these systems.

The costs associated with travel, lodging and meals shall be borne by Contractor. The cost associated with providing the training shall be covered by the State.

Contractor shall provide the State's Director of Nursing or designee, training in Contractors electronic health record.

3. DEFINITIONS

The following terms used in this Contract not specifically defined in the text shall have the following meanings:

- (a) **"Documentation"** means any and all descriptions and specifications of the Requirements included herein or created or developed hereunder, operational, functional and supervisory reference guides, manuals and instructive materials, in whatever form and regardless of the media on which it may be contained, stored or transmitted, which is developed, prepared, used or otherwise available from Contractor and/or Contractor's suppliers, in connection with and applicable to the provision, use, operation and support of the Services hereunder. Documentation shall be sufficient to enable State personnel to understand, operate, use, access, support, maintain, update and modify Services, notwithstanding that Contractor is or may be responsible for any or all of the foregoing obligations. Documentation shall also include all standards applicable to the Services, including those applicable to: (i) Contractor for its own comparable items or services; (ii) the State for its own comparable items or services; and (iii) such standards and guidelines as the parties mutually agree apply to the Services involved.
- (b) **"Facilities"** means the physical premises, locations and operations owned or leased by the State (a "State Facility") or the Contractor (a "Contractor Facility"), and from or through which the Contractor and/or its permitted contractors will provide any Services.
- (c) **"Requirements"** means the State's baseline Requirements in Attachment A of this Contract.
- (d) **"Report"** means Contractor shall provide documentation and collaboration to meet the State's reporting requirements. If requested, the Contractor shall use the State's Status Report template. If

no template is provided to the Contractor, the status information shall include, at a minimum the information specified in the Contract. All information and reports shall be uploaded to the Globalscape folder.

- (e) **"Indigent Inmate"** means an inmate will be deemed indigent if the combined balances of their facility account and any other accessible accounts are \$10 or less at all times during the thirty (30) days preceding the date on which the inmate submits a request for writing materials, postage, or any State-issued property to the Facility Business Manager or designee. Any inmate who refuses available work, for which they would be paid, although they are physically able and are permitted to work by virtue of their housing status, is not indigent for the purpose of this directive.

4. SCOPE OF SERVICES

4.1. RIGHT OF INSPECTION

State shall have the right to inspect, unhindered and at all times, the Facility housing State inmates as determined by the State to monitor the Contractor's operational compliance with the Contract and the health and welfare of State inmates. State shall have the right to inspect or otherwise evaluate the work performed or being performed under this Contract. Contractor shall allow access to and provide State with paper and digital records required for such inspections and evaluations to include the review of surveillance camera footage. Contractor shall allow and provide the State any and all documents needed for defense of claims and/or lawsuits against the State, State agencies or any State personnel/employees.

Contractor shall allow State contract monitors to attend regularly scheduled operational meetings between Facility administration and staff pertaining to Contractor's obligations under the Contract with the exception of attending meetings with Contractor's legal counsel, corporate officials or meetings involving employee disciplinary matters. State contract monitors shall not have access to records pertaining to inmates from other jurisdictions.

4.2. VTDOC OFFICE SPACE

Contractor shall provide the Vermont Contract Monitor with office space that has a lock, desk, chair, telephone, and internet access at the same standard bandwidth and connection speed as Contractor staff. Contractor shall not be responsible for non-business-related telephone costs.

Contractor shall provide Vermont Corrections Service Specialists (caseworkers) with space to meet privately with State inmates. This space shall include a desk, chairs, telephone, and internet access at the same standard bandwidth and connection speed as Contractor staff using State equipment. Contractor shall not be responsible for non-business-related telephone costs.

Contractor shall allow State staff access to their State issued laptops, printer, signature pad and document scanner in the office space provided.

Contractor shall provide State staff with safety and security equipment such as a radio and man-down alarm for use while inside the Facility.

4.3 PRISON RAPE ELIMINATION ACT

Contractor shall comply with the Prison Rape Elimination Act (PREA) of 2003 (28 C.F.R. Part 115, Docket No. OAG-131. R1N 1005-Date May 17, 2012) and shall adopt all applicable PREA Standards for preventing, detecting, monitoring, investigating, and eradicating any form of sexual abuse within the Contractor's Facility that houses State inmates. The Contractor acknowledges that, in addition to "self-monitoring requirements", State of Vermont Staff shall conduct announced and/or unannounced, compliance monitoring to include "on-site" monitoring to ensure that Contractor is complying with PREA standards.

4.4 POLICIES, PROCEDURES AND GUIDANCE DOCUMENTS

Contractor shall institute and be compliant with the following current VTDOC Directives, Guidance Documents and interim memorandums, including all revisions;

- 320.01 – Offender Grievance System
- 324.01 – Inmate Voting
- 385.00 – Inmate Access to Courts
- 405.00 – Incident Reporting
- 410.01 – Facility Rules and Inmate Discipline
- 410.03 – Placement on Administrative Segregation
- 410.05 – Protective Custody

Contractor shall maintain confidentiality of all VTDOC "Level A" Directives, and internal Guidance Documents. "Level A" Directives and Guidance Documents contain sensitive information and shall not be released to any inmate or member of the public without approval by State.

State shall provide training and Quality Assurance on these VTDOC Directives. Training shall be offered in accordance with Section 2 of this Contract.

At the time of the signing of this Contract, Contractor shall provide the State with;

- Complete set of Policy and Procedures that govern the operations of the Facility housing State inmates.
- Allowable property lists for each living unit housing State inmates.

Any time there is a change in the Policy or Procedures, the Contractor shall inform, explain and discuss the change with the State at least thirty (30) days in advance to the change being implemented.

4.5 GRIEVANCES

- 4.5.1 State shall be responsible to respond to grievances and appeals on matters occurring during the inmate's incarceration prior to the Contractor taking custody of the inmate. Examples include; reasons for the transfer; transfer of personal property until custody is relinquished to the Contractor; uses of force to require transfer; trust fund; oversight of contract compliance.
- 4.5.2 Contractor shall be responsible to respond to grievances and appeals on complaints occurring during the inmate's incarceration with the Contractor except for complaints that

are controlled by the State; sentence computation and interpretation and VTDOC case management (security classification, programming, staffing's, releases).

- 4.5.3 If an inmate appeals a grievance to the Warden or higher authority, the State shall be contacted for any relative input in the resolution.
- 4.5.4 Contractor shall review State inmate grievances to identify potential areas of concern and to determine if problematic patterns exist.

4.6 PRE-TRANSFER PACKETS

At least two (2) weeks prior to the anticipated transfer date, State shall provide Contractor transfer packets electronically using the Globalscape folder. Transfer packets shall include;

- 4.6.1 Record of adjustment in VTDOC correctional facilities:
 - 4.6.1.1 ID Face Sheet
 - 4.6.1.2 Keep-a-parts (separations)
 - 4.6.1.3 Current sentencing Mittimus, detainers and affidavits
 - 4.6.1.4 Sentence computation
 - 4.6.1.5 Criminal Record Check
 - 4.6.1.6 Drug Testing History
 - 4.6.1.7 Sexual Violence Screening Tool (most recent)
 - 4.6.1.8 Judicial and Administrative Rulings (stipulations/court orders)
 - 4.6.1.9 Misconduct (ten-year disciplinary history)
 - 4.6.1.10 Security Threat Group information
 - 4.6.1.11 Contact notes (back one-year)
 - 4.6.1.12 Current Vermont facility case plan
 - 4.6.1.13 Approved Visitor List
- 4.6.2 Facility medical & mental health records including but not limited to:
 - 4.6.2.1 Any current medical or mental health/psychological condition requiring treatment, including suicide attempts.
 - 4.6.2.2 Any needs for follow-up specialty care for medical or mental health conditions.
 - 4.6.2.3 Any medical admission testing performed and the results of those tests, including: hepatitis, HIV/AIDS, hemophilia, multiple sclerosis, pulmonary arterial hypertension, tuberculosis, or other infectious disease testing.
 - 4.6.2.4 Notice of current or previously administered medications.

4.7 TRANSPORTATION OF INMATES

- 4.7.1 Initial Transfers
 - 4.7.1.1 Contractor shall arrange for and transport, at its cost, approximately two hundred fifty (250) inmates from SCI Camp Hill in Pennsylvania to the Facility. State shall assist in coordinating the transfer with PADOC.
- 4.7.2 Routine Transfers
 - 4.7.2.1 Contractor shall, at its cost, provide one (1) thirty-man round trip transport once per month between Vermont and the Facility for the purpose of transferring inmates.

- 4.7.2.2 Contractor shall, at its cost, provide two (2) additional non-routine transports between Vermont and the Facility during each calendar year and at the request of the State. Each transport shall provide transfer of up to thirty inmates.
- 4.7.2.3 State shall provide Contractor with a list of inmate names to be transferred to and from the Facility.
- 4.7.2.4 Both State and Contractor shall provide basic medical and mental health documentation to the transporting officers for continuity of care. This information is in addition to the transfer of medical records. The basic information shall include;
 - 4.7.2.4.1 Current problems list (medical and mental health)
 - 4.7.2.4.2 Current chronic illness clinic (CIC)
 - 4.7.2.4.3 Current medication administration record (MAR)

The sending facility shall provide the transporting officers with seven (7) days' worth of medications.

- 4.7.2.5 Not more than seven (7) days prior to the transport, Contractor shall provide State with a Transportation Operations Plan for every transport conducted. The plan shall include, but not limited to, travel dates, assigned transport personnel, routes, inmate names, destinations, applicable security equipment, planned rest stops, emergency restroom protocols, meals, medication storage and delivery in route. The use of black security wrist restraint boxes shall be limited unless there is a verifiable security threat.
- 4.7.3 Retaking of Inmates
 - 4.7.3.1 Contractor shall surrender any State inmate to the proper officials of VTDOC upon demand made to the Contractor and presentation of official written authority to receive said inmate.
 - 4.7.3.2 In the event that the State sends an inmate to the Facility who, in the opinion of the Contractor, is unsuitable for housing at the facility due to custody classification, medical, mental health or other reasons, the Contractor shall discuss the inmate with the State. If it is agreed that the inmate shall be returned to the State of Vermont, the inmate shall be placed on the next available transport.
 - 4.7.3.3 In emergent situations, Contractor shall coordinate transportation to Vermont on a case by case basis.
- 4.7.4 Other than as provided above, any other transport of State inmates to or from Contractors facility shall be at the cost of the State, unless otherwise agreed upon by the Contractor.
- 4.7.5 Contractor shall inform the State within twenty-four (24) hours of all cases where an inmate is removed from the Contractor's Facility for emergency medical treatment, scheduled doctor's appointment, or any other reason. All reasonable care shall be exercised for the safekeeping and care of the inmate.
- 4.7.6 Upon expiration and/or termination of this Contract, State shall transport, at its cost, all State inmates who had been transferred to the Facility under this Contract to a destination of State's choice.
- 4.7.7 Except as otherwise indicated, transportation of an inmate for purposes of litigation for which Contractor is providing State, its agencies or employees a defense per this contract shall be at Contractor's expense.

4.8 TRANSFER OF INMATE FUNDS/PERSONAL PROPERTY

4.8.1 Initial Transfer

- 4.8.1.1 State shall coordinate the inventory, search and packaging of inmate property with PADOC. This shall include; (a) allowable property to transport with the inmate, (b) allowable property that shall be shipped to the Facility, and (c) non-allowable property to be shipped back to Vermont.
- 4.8.1.2 Contractor shall be responsible for all costs associated with the shipment of allowable property on the transport vehicle and allowable property that shall be shipped separately to the Facility. Contractor shall be responsible for any lost or damaged inmate property during shipment.
- 4.8.1.3 State shall be responsible for any property that is shipped to Vermont or other address for the sole reason that it is not allowed at the Facility. State shall be responsible for any lost or damaged inmate property during shipment.
- 4.8.1.4 Contractor shall not destroy inmates' personal property that arrives at the Facility on the initial transfer. Property that the Contractor deems not allowable shall be inventoried, boxed and shipped to an address of the inmates choosing. State shall reimburse the Contractor for the costs of these shipments.
- 4.8.1.5 State shall transfer inmate personal funds to Contractor to be credited to the inmates' account by the Contractor.

4.8.2 Transfers from Vermont to the Facility

- 4.8.2.1 State shall inventory and package inmate property for transfer. This shall include; (a) allowable property to transport with the inmate, and (b) allowable property that shall be shipped to the Facility.
- 4.8.2.2 State shall screen the inmates' property for dangerous contraband such as weapons, non-prescribed drugs, tobacco, or cell phones.
- 4.8.2.3 Contractor shall be responsible for all costs associated with the shipment of allowable property on the transport and allowable property that shall be shipped to the Facility. Contractor shall be responsible for any lost or damaged inmate property during shipment.
- 4.8.2.4 State shall transfer inmate personal funds to Contractor to be credited to the inmates' account by the Contractor.
- 4.8.2.5 Contractor shall work with State on the collection of debt that may be owed by State inmates in the Contractor's custody. State shall provide the Contractor, on a monthly basis, a list of the current inmate debt accounts. Monies collected from inmate accounts via the Contractor shall be submitted to VTDOC Central Business Office on a monthly basis.

4.8.3 Transfers from the Facility to Vermont

- 4.8.3.1 Contractor shall inventory and package inmate property for transfer. This shall include; (a) allowable property to transport with the inmate, and (b) allowable property that shall be shipped to Vermont as directed by the State.
- 4.8.3.2 Contractor shall screen the inmates' property for dangerous contraband such as weapons, non-prescribed drugs, tobacco, or cell phones.
- 4.8.3.3 Contractor shall provide the State with signed, legible copies of property receipts for all property shipped to Vermont.
- 4.8.3.4 Contractor shall be responsible for all costs associated with the shipment of allowable property on the transport and allowable property that shall be

shipped to Vermont. Contractor shall be responsible for any lost or damaged inmate property during shipment.

4.8.3.5 Inmate personal funds due to transferred inmates shall be provided by the Contractor to State at the time of transfer. On the day of the return, the funds shall be sent to the State along with a list of the inmates being transferred, their dates of birth and the amount owed to each.

4.8.3.6 State shall work with the Contractor on the collection of debt that may be owed by State inmates while in the Contractor's custody. Contractor shall provide State, on a monthly basis, a list of the current inmate debt accounts. Monies collected from inmate accounts via State shall be submitted to the Contractors Business Office on a monthly basis.

4.9 CUSTODY CLASSIFICATION

Contractor shall classify State inmates in accordance with the policies and procedures of the Contractor and the rules and regulations of the Facility and the laws and regulations of the state where the Facility is located.

Contractor shall not reduce custody classification of any State inmate placed pursuant to this Contract unless agreed to in advance and in writing by the State. Contractor may increase the custody classification of inmates in a manner consistent with its policies and procedures and shall notify the State within seventy-two (72) hours of such action.

Contractor shall provide State with any documentation used in the Contractors classification process to include; criteria, classification tools, and housing limitations for each custody level.

4.10 CLOTHING, LINEN AND LAUNDRY

Contractor shall be responsible for laundry services, repair, and replacement of State inmate clothing during incarceration at the Facility. Contractor shall provide State inmates with clean clothes and bedding on a weekly basis. Contractor shall provide State inmates with a minimum of three (3) sets of clean facility uniforms upon admission as well as the following:

- Socks – three pairs
- Undershirts – three
- Underwear – three
- Shorts – One
- Sweat clothes (top and bottom) – one set
- Shoes – one
- Long underwear (top and bottom) – one set (seasonal issue)
- Winter jacket – one (seasonal issue)
- Winter hat – one (seasonal issue)

Contractor shall provide State inmates with appropriate footwear for their work assignment. Contractor shall make shoes available for purchase in the commissary.

Contractor shall provide laundry services to the inmates at no charge to the inmate in accordance with established Contractor policies.

Contractor shall provide clean bedding to include; sheets, blanket(s), pillow, pillow case and mattress.

4.11 INMATE WORK

Contractor shall employ State inmates for work to be performed for the benefit of the facility such as; maintenance, clerical, janitorial, kitchen, laundry and Law Library. Contractor shall ensure that there are sufficient job opportunities to employ, at a minimum, forty (40) percent of the State's population housed at the Facility. The wage rate for these jobs shall be the wages in place at the Facility as dictated by standards governing the Facility, including but not limited to applicable statutes, but in no event shall be lower than the wages paid for the same work to inmates at the Facility from other jurisdictions. This provision does not create an employer/employee relationship subject to the Federal Fair Labor Standards Act; and that such work is performed as part of the custodial arrangement. State inmate work assignments shall be separated from other populations and jurisdictions.

4.12 INMATE PROGRAMS AND EDUCATION

Contractor shall afford all State inmates the opportunity to participate in programming opportunities such as; educational, vocational, treatment, religious/spiritual and recreational. Programs shall include but are not limited to;

- 4.12.1 Education; Contractor shall utilize educational assessments to identify State inmates' current educational requirements for placement in the most appropriate programs.

Contractor shall provide the following academic programs:

- 4.12.1.1 Adult Basic Education (Foundation Literacy)
- 4.12.1.2 Adult Basic Education (Literacy)
- 4.12.1.3 Adult Basic Education (Pre GED)
- 4.12.1.4 Adult Basic Education (GED)
- 4.12.1.5 Post-Secondary Academic

- 4.12.2 Vocation; Contractor shall provide the following vocational programs including the equipment and software for the following:

- 4.12.2.1 Microsoft Office Keyboarding
- 4.12.2.2 Microsoft Office Word
- 4.12.2.3 Microsoft Office Power Point
- 4.12.2.4 Microsoft Office Excel

- 4.12.3 Treatment; Contractor shall provide the following substance abuse treatment programs:

- 4.12.3.1 Substance Abuse
- 4.12.3.2 Alcoholics Anonymous
- 4.12.3.3 Narcotics Anonymous
- 4.12.3.4 Re-entry Program (Go Further Process)

- 4.12.4 Religious/spiritual; Contractor shall provide religious programs in accordance with ACA standards.

- 4.12.5 Recreation; Contractor shall provide for a minimum of six (6) hours of out of cell opportunities for inmates in General Population per day. This may be in the form of indoor and outdoor recreation to include organized classes and activities. Indoor

recreation shall include both dayroom access and time spent in a gymnasium. Outside of extenuating circumstances, out of unit recreation shall be afforded seven (7) days a week for no less than 1.5 hours per day. Contractor shall provide State inmates with equipment and supplies to accommodate pro-social leisure time.

Nothing contained herein shall be construed to permit or require any State inmate to participate in any training, work, or other program contrary to the laws of the State of Vermont. State inmates shall not be eligible for furloughs, participation in the work release program, or be employed in work programs outside the secured perimeter of the Facility.

4.13 MEALS

Contractor shall provide State inmates with a nutritionally balanced, varied diet of adequate portions of food, pursuant to standards established by the ACA. All menus shall be approved by a registered dietician or nutritionist and all meals shall be prepared in compliance with the approved menus. Contractor shall provide special meals which meet medical or religious requirements of applicable State inmates. Special medical meals must meet the nutritional requirements as prescribed by a medical doctor.

4.14 INMATE VISITS

Contractor shall provide State inmates with the opportunity to participate in in-person visiting privileges from family members and friends for the purpose of maintaining family and social relationships, and to facilitate the inmate's re-entry to the community. Conjugal visiting is not authorized for State inmates.

Visiting privileges shall be based on the frequency, duration and procedures afforded to other inmates housed by the Contractor and as appropriate to the inmate's custody level except that:

- 4.14.1 Contractor shall vet all contact visitor approvals through the State. The State shall provide the approved visitor list upon request or update.
- 4.14.2 Contractor shall provide and maintain the equipment at the Facility that would allow for visits using secure compatible video equipment connected to a high-speed internet line or kiosk that shall allow an inmate's family to have video contact with the inmate.

4.15 ACCESS TO COURTS, LEGAL RESEARCH AND SUPPLIES

Contractor shall provide access to courts, access to a law library, and access to counsel in accordance with ACA Fourth Edition standard, US Constitution and US Supreme Court. Contractor shall provide a commensurate Access to Court services as provided by State in its facilities.

Contractor shall ensure all State inmates Access to Court is in compliance and consistent with State Policy 385 and Guidance Documents for staff and inmates. The Contractor shall provide access to US Federal and the States legal research materials and texts at the Facility. Prior to housing State inmates, Contractor shall provide a list of Federal and States legal research software used, electronic equipment available for inmate use, and legal materials and texts available at the Facility.

Vermont-specific legal materials may be furnished by the State via online licenses with Lexis Nexis. Contractor shall provide a minimum of four (4) kiosks or computer terminals to ensure that every State inmate has access regardless of custody level, or in the alternative provide secure and monitored locations to house Vermont terminals, server and permit installation of online DSL service. Equipment, DSL installation and service shall be the responsibility of the State. Contractor shall ensure that sufficient power and outlets are available at the place of State servers and terminal installations.

Contractor shall provide typewriters, ribbons, correction tape, typing paper, notary services, photocopying services, in sufficient quantity and availability to meet constitutional standards. Contractor shall provide suitable tables, desks, chairs, typing tables, computer desks for State inmate use. State inmates may be billed for above items and services consistent with VTDOC Directive 385 and relevant Guidance Documents. Indigent State inmates' legitimate legal fillings shall not be delayed due to inability to pay. Indigent State inmates shall be provided with necessary services and materials to facilitate Access to Courts. The Contractor is entitled to recover costs as soon as the inmate has sufficient funds in his account.

4.16 INMATE ACCESS TO ATTORNEYS, COURTS AND VERMONT PAROLE BOARD

Contractor shall ensure that there is at least one (1) unmonitored telephone line per housing unit available for State inmates to place and receive telephone calls to and from attorneys, Courts, Vermont Parole Board, or other legal proceedings ordered and conducted by the state or federal courts. Phone access, relative to this section, shall include a private room, a writing table, and a chair for each participant. Contractor shall be responsible for connecting State inmates with the applicable entity. Contractor shall ensure that calls are made between the inmate and the authorized legal representative.

Contractor shall allow the Vermont Prisoner's Rights Office (PRO) physical access to State inmates. Contractor shall provide a private room, a writing table, and a chair for each participant for the PRO attorney or designee to meet with State inmates. State inmates shall be permitted to bring paperwork or other documents with them when meeting with representatives from the PRO.

Contractor shall ensure that the Facility has the capability to receive Skype for Business video and audio conferencing. Skype for Business shall be used to accommodate, but not limited to, State staff contacts with State inmates and Vermont Parole Board hearings. Any hardware costs incurred are the responsibility of the Contractor.

4.17 MAIL

Contractor shall provide State inmates with mail services. State inmates shall be provided the opportunity to use up to seven (7) first class postage stamps per week. Contractor shall develop a system to track the postage usage by inmate by week and submit documentation with a monthly invoice for reimbursement.

Contractor shall provide State inmates that meet the criteria for indigent status with supplies for correspondence. No request to mail a verified legal pleading shall be denied under this

provision regardless of postage limit or financial status of the State inmate. The Contractor is entitled to recover postage fees when the inmate has sufficient funds in their account.

Contractor shall not allow State inmates to correspond through the mail with any individual on the State's negative contact list as established in 28 V.S.A. 11 § 802 (c) (d). State shall provide this list to the Contractor. State shall provide an updated list to the Contractor either upon the Contractor's request or when changes are made to the list by the State.

Inmate to Inmate mail shall be approved or denied as determined between the Contractor and State.

4.18 INTERDICTION PROGRAM

4.18.1 Urinalysis Testing

Contractor shall test via random sampling 5% of the State inmate population each month. Contractor shall incur the costs for urinalysis testing.

4.18.2 Searches

Contractor shall search, in accordance with applicable state and federal law, 10% of the State population each month. Contractor shall search the inmate, the inmate's room or sleeping quarters, and the inmate's personal property.

In addition to the inmates and the inmate areas, Contractor shall also search the common areas of the Facility on a routine basis so that each quarter all of the common areas in the Facility have been searched.

4.18.3 Contraband

Contractor shall maintain a log of all dangerous contraband (e.g. illegal drugs, weapons, cell phones, escape paraphernalia, etc.). Entries in the log at a minimum shall contain what the contraband item was, where it was found, who found it, and when it was found (date and time). The log shall also include how the contraband was disposed of. Provided however, Contractor shall not log nuisance contraband such as excess property or items, although prohibited, that do not constitute a danger to the good order and security of the facility.

4.19 NOTIFICATION OF INCIDENTS AND EMERGENCIES

4.19.1 Contractor shall notify State of the following events within one (1) hour, to include outside of normal business hours;

- 4.19.1.1 Death of a State inmate
- 4.19.1.2 Illness/medical condition (life threatening or high-lethality)
- 4.19.1.3 Suicide attempt (life threatening or high-lethality)
- 4.19.1.4 Escape or attempted escape
- 4.19.1.5 Hostage situation
- 4.19.1.6 Disturbances involving four (4) or more inmates
- 4.19.1.7 Lockdown of any State inmate housing units

4.19.2 Contractor shall notify State of any of the following events within twenty-four (24) hours of occurrence:

- 4.19.2.1 Medical or mental health conditions that require transport to a hospital
- 4.19.2.2 Placement in the infirmary/medical/mental health observation
- 4.19.2.3 Assault/attempted with the use of a weapon
- 4.19.2.4 Evacuation
- 4.19.2.5 Use of any restraints for more than two (2) hours
- 4.19.2.6 Use of force in which there is an injury to a State inmate requiring medical treatment
- 4.19.2.7 Alleged or known assault by an employee or civilian
- 4.19.2.8 Alleged or known PREA incident
- 4.19.2.9 Disturbance involving three (3) or more inmates which is not brought under control within fifteen (15) minutes
- 4.19.2.10 Property destruction rendering a living unit or support service area unusable
- 4.19.2.11 Use of chemical agents including hand-held OC units

Contractor may make initial notification via phone or e-mail contact. Contractor shall provide State with electronic copies of the Facility's reports within seventy-two (72) hours of the event.

4.20 ESCAPE

Contractor shall take all actions necessary, in accordance with applicable law, to affect the apprehension of the escaped inmate. In the case of an escape to a jurisdiction other than the state in which the inmate was housed, the responsibility for extradition or rendition proceedings shall be that of State. Any reasonable costs, including the expense and time of State employees, up to \$50,000.00 incurred by State in connection with any escape and or rendition and extradition process shall be chargeable to and borne by Contractor.

4.21 RECORDS AND REPORTS FROM CONTRACTOR

Contractor shall provide the following information and reports to the State. All information and reports shall be uploaded to the Globalscape folder.

- 4.21.1 Any time a State inmate is placed in segregation, for any reason, a written report documenting the reason shall be uploaded to the Globalscape folder within twenty-four (24) hours.
- 4.21.2 Each Monday, a report shall be uploaded to the Globalscape folder, by 1100 hours (EST), that shows the number of State inmates in segregation by name, their admission date into segregation, the reason for their placement, and when they were released from segregation.
- 4.21.3 Contractor shall provide monthly reports to the State by the 5th of every month detailing information for the month prior. Monthly reports shall include:
 - 4.21.3.1 Food Service - menu for the upcoming month, number of times the menu was changed last month, number of special and medical diets prepared;
 - 4.21.3.2 Disciplinary - a report that reflects the inmate names, rule infractions, date of infraction, hearing date, hearing results, imposed sanctions and any appeals filed;

- 4.21.3.3 Grievances - a report that reflects the inmate names, the category of the complaint, the resolution, and dates throughout the process; including informal complaints, formal grievances and any appeals filed, narrative of trends or patterns identified through grievance reviews;
- 4.21.3.4 Urinalysis - name, date, random/cause, results, (positive for);
- 4.21.3.5 Searches - random and cause;
- 4.21.3.6 Contraband Log - what it was, where it was found, who found it, when it was found (date and time) and inmates(s) names if applicable;
- 4.21.3.7 Visitation - numbers of inmates receiving visits and the number of visitors, hours of visiting; including contact and noncontact visits;
- 4.21.3.8 Religious Services - hours, participants, faith;
- 4.21.3.9 Recreation - indoor, outdoor, activities, participants;
- 4.21.3.10 Education - hours, participants, classes;
- 4.21.3.11 Work - hours, participants, jobs;
- 4.21.3.12 Law Library access – days and hours available by week, inmate sign in sheets evidencing individual inmate usage, services provided to inmates unable to access the law library (segregation, infirmary, special management units), equipment unavailability or failure (photocopier, typewriter, terminals);
- 4.21.3.13 Lawsuits - current lawsuits by State inmates served on the Facility or Corporation;
- 4.21.3.14 Security Threat Group (STG) identification or validation;
- 4.21.3.15 Health Services Statistical and Monitoring Reports – including Chronic Illnesses, Mental Health Caseload Status and Treatment Planning, Off-site Services and others as determined by the VT DOC Health Services Division.;
- 4.21.3.16 Updates on staffing levels at the Facility.

Any records or reports provided to the State from the Contractor, in any form, shall be considered a public record under the Vermont Public Records Act and shall be subject to disclosure.

4.22 PHOTOGRAPHING AND PUBLICITY

Contractor shall not be authorized to release publicity concerning State inmates. Contractor shall not release personal histories or photographs of such inmates or information concerning their arrivals or departures or permit reporters or photographers to interview or photograph such inmates without the express written permission of the State and of the inmate. The Contractor may photograph inmates as a means of identification for official use only; however, photographs of an inmate may be disseminated to appropriate law enforcement officials and to the press in the event of any escape from an institution by such inmate.

All requests for media interviews with State inmates must be approved in advance by the State.

4.23 COMPREHENSIVE HEALTHCARE SERVICES

Contractor's written policies and procedures shall describe health services, mental health service, and dental services to be provided. At a minimum, these must meet ACA standards, federal, state and local laws and regulations, and the following State policies and procedures.

4.23.1 Initial Healthcare Receiving Screening

Contractor shall conduct a receiving screening on all newly admitted State inmates within twenty-four (24) hours of the inmate's arrival at the Facility. Contractor shall ensure that this screening is conducted by a qualified healthcare professional who is licensed in the State of Mississippi and shall include review of healthcare information for each inmate and provision of necessary services, including but not limited to:

- 4.23.1.1 Current and past medical, mental health, dental, pharmacological, and other problems;
- 4.23.1.2 A physical evaluation;
- 4.23.1.3 Observation of:
 - 4.23.1.3.1 Behavior, which includes state of consciousness, mental status (including suicidal ideation), appearance, conduct, tremors and sweating;
 - 4.23.1.3.2 Body deformities and ease of movement;
 - 4.23.1.3.3 Persistent cough or lethargy; and
 - 4.23.1.3.4 Condition of skin, including trauma markings, bruises, lesions, jaundice, rashes, infestations and needle marks or other indications of drug abuse. This should also include a Methicillin Resistant Staphylococcus Aureus (MRSA) check.
- 4.23.1.4 History of serious infectious or communicable diseases, and any treatment or symptoms (e.g., chronic cough, lethargy, weakness, weight loss, loss of appetite, fever, night sweats) suggestive of such illness;
- 4.23.1.5 Mental illness, including history of suicidal ideation;
- 4.23.1.6 Current and past medications;
- 4.23.1.7 Dietary requirements;
- 4.23.1.8 Use of alcohol and other drugs, and any history of associated withdrawal symptoms;
- 4.23.1.9 Screening and evaluation for other health problems;
- 4.23.1.10 Education and orientation regarding how to access healthcare services at the Facility, including:
 - 4.23.1.10.1 Procedures for obtaining healthcare services (e.g., submission of "Healthcare Request Forms");
 - 4.23.1.10.2 Timeframes for sick call responses;
 - 4.23.1.10.3 How various healthcare services are provided, including but not limited to chronic care, emergency services, pharmaceutical services, and infirmary services;
 - 4.23.1.10.4 The behavior expected of inmates while in the health care services area;
 - 4.23.1.10.5 Grievance procedures;
 - 4.23.1.10.6 Procedure for obtaining copies of protected health information.
 - 4.23.1.10.7 Orientation to the Prison Rape Elimination Act (PREA) to include the Contractor(s) local procedures on how to report sexual abuse or harassment.
 - 4.23.1.10.8 Information regarding how to complete Advance Directive forms which are germane to the State of Mississippi.

4.23.2 Physical Examinations

Contractor shall ensure that physical examinations are conducted annually or as clinically indicated based on the age and unique health condition of each inmate.

4.23.3 Sick Call

Contractor shall provide a sick call system which provides inmates with access to health care services. Contractor's Health care staff shall collect, triage, and respond to all inmate requests daily. The frequency of sick call shall be consistent with NCCHC standards. If the inmate's custody status precludes attendance at sick call, appropriate measures shall be taken to provide access to health care services.

4.23.4 Emergency Services

Contractor shall provide an immediate response to inmates with emergency health care needs. Contractor shall have twenty-four (24) hour physician coverage or telephone on-call coverage. Contractor shall have specific written policies and procedures to address emergency response and the emergency transfer of inmates. Contractor shall completely and accurately document all emergency responses in the inmate's medical record.

4.23.5 Infirmary Services

Contractor shall staff and utilize infirmary beds available at the Facility for admissions which do not require hospitalization. Inmates requiring respiratory isolation shall be housed in a designated negative air pressure room. The Contractor shall comply with state and federal laws and NCCHC standards with respect to the management and operation of infirmary facilities. Physician orders shall dictate when inmates are admitted to and discharged from the infirmary/medical housing as well as how frequently the inmate shall be seen by qualified healthcare professionals. All inmates placed in the infirmary or medical observation shall at all times be able to access healthcare services through visual or auditory cues.

4.23.6 Hospitalization

Contractor shall ensure that all inpatient hospital claims are processed through the Vermont Department of Vermont Health Access (Vermont's Medicaid program), since all State inmates may receive Medicaid benefits for inpatient hospital services, even if those services are provided out of state. The Contractor shall be financially responsible for all inpatient hospital services that are not remitted through Vermont's Medicaid program. Contractor shall ensure that an inmate's medical chart accurately and completely documents services provided by community health care providers.

Under no circumstances shall Contractor limit or delay access to inpatient hospitalization for inmates identified as needing this level of care. State, at its discretion, may audit any case to ensure that there is no limit or delay access to inpatient hospitalization for inmates identified as needing this level of care.

4.23.7 Utilization Management & Specialty Outpatient Services

Contractor shall implement a utilization management process, utilizing Interqual or other criteria, for the purposes of the timely review, approval, denial, or modification of requests for specialty outpatient services. Contractor shall be responsible for scheduling, authorizing, and coordinating all specialty services. Contractor shall arrange

for qualified medical specialists to visit the Facility to avoid the transport of inmates off-site whenever possible. If necessary, an outside referral shall be made for services that cannot be provided at the Facility. To the degree possible, diagnostic testing shall be performed on-site. The Contractor shall provide specialty service providers with all pertinent information needed to facilitate timely assessment, diagnosis, and treatment. The medical specialist shall receive diagnostic testing results, substantive patient history and clinical findings in the form of a written referral.

Contractor shall ensure that all inmates returning from outside hospital stays or clinic visits shall be seen immediately upon return by a medical professional, and a progress note regarding the review shall be documented in the inmate's health care record. Contractor shall document all off-site services provided to the inmate in the inmate's healthcare record.

Under no circumstances shall Contractor limit or delay access to specialty services for inmates identified as needing this care. State, at its discretion, may audit any case to ensure that there is no limit or delay of access to specialty services for inmates identified as needing this care.

4.23.8 Laboratory Services

Contractor shall provide lab diagnostic testing. Laboratory testing shall include but not be limited to routine, special chemistry, and toxicology analysis. The laboratory shall meet all applicable state and federal requirements for specimen handling, testing, and reporting. The Contractor shall review any test and or lab results with the inmate in a timely manner based on the acute or non-acute nature of the testing performed. The Contractor shall document all conversations with inmates regarding laboratory results in the inmate's healthcare record.

4.23.9 Radiology Services

Contractor shall ensure that a radiology technician shall be available to provide radiology services. Contractor shall refer inmates off-site for procedures beyond the scope of services provided on-site. Contractor shall ensure that a Board-Certified radiologist shall read the studies in a timely manner. Contractor shall document the radiology report and maintain it in the inmate's healthcare record. The Contractor's Medical Director shall review, initial, and date all radiology reports. Contractor shall furnish a verbal notification of all positive findings to the State's Medical Director or his/her designee within three (3) working days; this verbal notification is to be followed up by a written notice of findings within ten (10) working days.

4.23.10 Medical Diets

Contractor shall make medical diets available to inmates when indicated and ordered by the physician. Contractor shall document the need and dietary services required in the inmate's healthcare record. Contractor shall document the inmate's orientation to the medical diet in the healthcare record. In accordance with NCCHC standards, Contractor shall coordinate reviews of all diets at least every six (6) months with a registered dietitian.

4.23.11 EKG Services

Contractor shall provide EKG services and necessary EKG equipment. Contractor shall ensure that there is immediate reading and reporting of results of EKG. Contractor shall conduct in service training of nursing staff on EKG services.

4.23.12 Medical Prosthetics

Contractor shall provide prosthetic devices to inmates as medically indicated. Prosthetics shall be selected according to community standards, but also must conform to security requirements of the Facility and the Americans with Disabilities Act. The costs associated with providing prosthetics shall be borne by the Contractor.

4.23.13 Optical Services

Contractor shall identify the need for optical services. Contractor shall ensure that inmates requesting health care services for visual problems shall be evaluated using the Snellen eye chart by nursing staff. If a visual deficiency beyond 20/40 is identified, Contractor shall refer the inmate to Contractor's optical service provider. Contractor shall coordinate the provision of optometrist services either on-site or off-site. Contractor shall pay for the evaluation, fitting, and dispensing of an optometrist.

Contractor shall provide one (1) set of eyeglasses to inmates if prescribed and deemed necessary by the optometrist. Inmates shall be eligible to receive follow-up eye exams every two (2) years.

Contractor shall offer all monocular inmates a referral to the optometrist for a discussion of vision preservation without regard for visual acuity by Snellen testing.

4.23.14 Pharmaceuticals

Contractor shall provide a total pharmaceutical system, including psychotropic medications, which is sufficient to meet the needs of the State inmates. Policies, procedures and practices addressing pharmaceuticals shall be in compliance with all applicable state and federal regulations.

The pharmaceutical system shall have the following components:

- 4.23.14.1 Medication ordered by a qualified provider (physician, psychiatrist, nurse-practitioner, dentist) shall be appropriately documented in the medication administration record (MAR) and healthcare record.
- 4.23.14.2 A pharmaceutical inventory shall be established to facilitate the initiation of pharmaceutical therapy upon the physician's order. An inventory control system shall be implemented to ensure the availability of necessary and commonly prescribed medications. All pharmaceuticals shall be prepared, maintained, and stored under secure conditions to protect against the loss of pharmaceuticals.
- 4.23.14.3 An adequate and proper supply of antidotes and emergency medications shall be available.
- 4.23.14.4 Contractor shall maintain a formulary listing the available medications, and this formulary shall be available to the State.

4.23.14.5 While it is recognized that formulary prescribing is the norm, cases may arise in which non-formulary medications are determined to be the most effective treatment. When this occurs, the need for non-formulary medications shall be reviewed as part of the Utilization Management process and provided to the inmate as indicated by the appropriate authority (e.g., Medical Director).

4.23.15 Medication Administration

Contractor shall maintain a medication administration system which meets the needs of State inmates. Medication shall be administered to inmates by nurses or other authorized personnel three (3) times daily or as ordered. The administration of each medication shall be documented on a medication administration record (MAR). On the MAR, staff shall document instances when an inmate refuses a medication or is not available to receive a medication. Medication administration times shall be adjusted to meet the needs of inmates who participate in work details or classes.

For inmates who are non-adherent to medications (especially essential medications to control chronic or acute health or mental health conditions), referrals to a medical or mental health provider for counseling shall be made prior to discontinuing the medication. Psychiatric medications shall not be discontinued until the inmate has met with mental health staff to discuss the reason the medication was originally prescribed and the risks of discontinuation. All conversations regarding medication non-adherence shall be documented in the inmate's healthcare record.

4.23.16 Dental Services

Contractor shall provide on-site dental services which include preventive and restorative care. An initial dental appraisal and instruction in oral hygiene shall be conducted within fourteen (14) days of admission. The Contractor's provision of a dental screening for all referred inmates shall be conducted by a licensed dentist. Nurses who provide oral hygiene instruction shall receive in-service training.

Inmates may request dental services in accordance with the Contractor's protocols and procedures. Inmates shall be seen as soon as practicable, based on acuity. Inmates who require treatment beyond the capabilities of the Contractor's licensed dentist shall be referred to a dental specialist. Dental prostheses shall be provided as determined by a licensed dentist.

4.23.17 Hepatitis C Treatment

It is recognized by the Parties that the prevalence of hepatitis in prison populations is higher than the general public. The Contractor shall develop clinical guidelines, consistent with Federal Bureau of Prison Guidelines, for the treatment of hepatitis C. Contractor shall be responsible for the costs associated with hepatitis C treatment.

4.23.18 Mental Health Services

Contractor shall provide individualized mental health services to meet the needs of State inmates, including assessment, evaluation, diagnosis, development of treatment plans, evidence-based individual and group interventions, psychopharmacology, and periodic review by a multi-disciplinary treatment team. All mental health records shall

be provided by the State to the Contractor for the purposes of continuity of care. The Contractor shall document all mental health services provided to inmates (including refusals of care) in the inmate's healthcare record.

4.23.19 Suicide Prevention and Crisis Intervention

Contractor shall provide routine screening and evaluation of inmates to assess suicidal ideation or behavior. When an inmate is suspected of being at risk of harming self or others, Contractor shall take all necessary measures and interventions to maintain the inmate's safety. Compliance with standards of professional practice shall be followed.

When an inmate experiences psychiatric emergencies or crisis, the Contractor shall take all necessary measures to respond to the inmate's needs, place the inmate in an appropriate treatment setting (including but not limited to medical observation or a psychiatric hospital), and maintain the safety of the inmate and staff.

Contractor shall document all interactions with inmates that are suicidal or showing signs of psychological decompensation in the inmate's healthcare record.

4.23.20 Health Care Records

Contractor shall maintain a healthcare record for all inmates which includes documentation of all healthcare services provided to inmates on-site or off-site. Contractor shall provide full and unrestricted access to and copies of the appropriate health care record to the State within the scope of legal and regulatory requirements and in accordance with the State's policies, procedures and directives. Contractor's with an electronic health record shall provide read-only access to the State's Director of Nursing or designee. Contractor shall respond to written requests for information regarding the health status of an inmate within 24 hours of the written request. Failure to respond to the State's request for additional information may result in the assessment of liquidated damages, which shall be deducted from the Contractor's monthly invoice.

The standardized health care record shall contain, but not be limited to, the following information:

- Problem list;
- ADA accommodations and forms;
- Completed intake screening form;
- Health appraisal form;
- Clinical (SOAP(E)) notes;
- Physician orders;
- Inmate requests for health care services, including illnesses and injuries;
- All diagnostic findings, treatments and dispositions;
- Prescribed medications and their administration;
- Laboratory, radiology and other diagnostic studies;
- Consent and refusal forms;
- Release of Information forms;
- Date and time of health care encounters;
- The health care provider's name and title;
- Hospital reports and discharge summaries;

- Intra-system and inter-system transfer summaries;
- Specialized treatment plans;
- Consultation forms;
- Healthcare Request Forms;
- Grievance forms;
- Documentation of all medical, dental and mental health care services provided, whether from inside or outside the facility.

A health care record shall be initiated during the inmate's first health care encounter and shall contain complete and accurate records of health care services provided during the inmate's placement at the Facility. The State shall provide health information at the time of transfer, and the Contractor shall provide relevant records to the State upon an inmate's return to the State's custody. Health care records shall be maintained securely and in a confidential manner at all times.

4.23.21 Quality Assurance and Improvement Program

Contractor shall implement a Quality Assurance (QA) and Continuous Quality Improvement (CQI) program as set forth by NCCHC standards. The program shall be designed to identify issues related to providing healthcare services and develop corrective action plans to address deficiencies in a timely manner.

The program shall consist of the following elements:

- Risk Management - Contractor shall establish a logical and thorough system of policies and procedures to minimize exposure to liability. Risk management activities focus on the identification of clinical events which have, or may have, the potential of placing the inmate, health care provider, or the facility at risk. Identified risk areas are investigated and analyzed to develop policies and procedures that reduce risk and maintain a safe clinical setting. The quality improvement plan shall include a safety component to provide a safe environment for inmates, employees and visitors.
- Infection Control - Contractor's infection control policies and procedures shall focus on the prevention, identification and control of diseases acquired in the facility setting or brought in from the outside community. The infection control program shall address hand washing, housekeeping, decontamination, disinfection and sterilization of equipment and supplies, medical isolation, infectious agents, blood borne pathogens, infectious waste, pest control and parasite infected environments.
- Utilization of Services – Contractor shall collect and monitor statistical data to detect potential problems. Volume data reporting forms shall be used to report data and to track the utilization of health care services on a year-to-date basis. All deviations shall be reviewed for problem identification. Contractor shall monitor the utilization of all health care services provided off-site, as compared to national data on incarcerated populations, and shall be readily available for telephone consultations. Contractor shall provide the State with a monthly report identifying those inmates transferred off-site to the hospital emergency department, and a status report on all inmates in local hospitals and infirmaries. Contractor's volume data

reporting forms shall also be used to prepare a narrative report on the types and numbers of services provided.

- Inmate Grievances - Grievances are reviewed to identify potential areas of concern and to determine if problematic patterns exist. Inmate grievances shall be documented in a log to assist in monitoring compliance with policy and procedure related to inmate grievances and to summarize those areas which are frequently the topic of inmate dissatisfaction. All inmate grievances shall be responded to within twenty (20) days of receipt and included in monthly reporting.

Contractor shall work with the State's Health Services Administrator or designees on all QA and CQI plans relating to State inmates. The Contractor shall provide the State with all QA, CQI, and corrective action plans that are developed as a result of critical clinical events, including but not limited to expected or unexpected inmate deaths, even if those documents are generally protected by "peer review" statutes. The Contractor shall verify its compliance with all QA, CQI, and corrective action plans suggested by the State.

4.23.22 NCCHC Accreditation

Contractor shall work in good faith to pursue NCCHC accreditation and shall receive accreditation for these sites, or any other sites where State inmates are housed, within twelve (12) months of the commencement date of the contract

4.23.23 Inmate Death

Contractor's written policies and procedures shall provide for the prompt notification of the State in case of an expected or unexpected inmate death. Any death of a State inmate assigned to the Facility shall be reported within one (1) hour of the death to State. A post-mortem/autopsy examination shall be conducted on all inmates who die while in the custody of the Contractor. The costs of post-mortem/autopsy examination shall be borne by the Contractor. Contractor and State shall communicate with each other to determine the most appropriate way to convey notice of an inmate's death to his next-of-kin. Contractor shall provide the State with any and all documentation, or other information such as video, relative to the inmate death within 7 days of the event. The State will be responsible for all costs to prepare and transport the body of a deceased Vermont inmate.

4.23.24 Medical Co-pay

Contractor shall not charge a medical co-payment to State inmates.

4.24 HEADINGS

Headings herein are for convenience of reference only and shall not be considered any interpretation of this Contract.

5. NOTICES

Any notice provided for in this Contract shall be in writing and served by personal delivery or by certified mail, return receipt requested, postage prepaid, or by national overnight courier service at the addresses listed in Section 13 unless written notice of a change is received from the other party. Any notice so mailed and any notice served by personal delivery shall be deemed delivered and effective upon receipt or upon attempted delivery. This method of notification will be used in all instances, except for emergency situations when immediate notification is required pursuant to the appropriate sections of this Contract.

6. NO THIRD-PARTY BENEFICIARY ENFORCEMENT

It is expressly understood and agreed that enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to State and Contractor, and nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other person on this Contract. It is the express intention of State and Contractor that any entity, other than State or Contractor receiving services or benefits under this Contract, shall be deemed an incidental beneficiary only.

7. MODIFICATION AND WAIVER

This Contract contains the entire Contract and understanding between the parties and supersedes any other Contracts concerning the subject matter of this transaction, whether oral or written. No modification, amendment, notation, renewal or other alteration of or to this Contract shall be deemed valid or of any force or effect whatsoever, unless mutually agreed upon in writing by the parties. No breach of any term, provision or clause of this Contract shall be deemed, waived or excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse of any other different or subsequent breach.

8. SEVERABILITY

If any term or condition of this Contract shall be held to be invalid, illegal or unenforceable, this Contract shall be construed and enforced without such provision to the extent this Contract is then capable of execution within the original intent of the parties.

9. RISK OF PHYSICAL DAMAGE TO FACILITY

The risks and costs of physical damage to the Facility incurred as a direct result of the placement of State inmates in the Facility shall be considered usual costs incidental to the operation of the Facility and part of the costs reimbursed by the fixed rate per inmate day as provided in Attachment B. Contractor shall not administratively adjudicate reimbursement from State inmates without a small claims or other court order to recover expenses related to damages caused by State inmates.

10. COMPLIANCE WITH APPLICABLE LAWS

Contractor shall, at all times during the performance of its obligations of this Contract strictly adhere to all applicable federal laws and regulations, including protection of the confidentiality of all applicant/recipient records, papers, documents, tapes or any other materials that have been or may hereafter be established which relate to this Contract. The Contractor acknowledges that the following laws are included: Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1972, the Education Amendments of 1972, the Age Discrimination Act of 1975, the Americans With Disabilities Act, including Title 11, Subtitle A, 24 U.S.C. Sec. 12101, et seq. and all rules and regulations applicable to these laws prohibiting discrimination because of race, religion, color, national origin, creed, sex, age and handicap in federally assisted health and human services programs. This assurance is given in consideration of and for the purpose of obtaining any and all federal grants, or other federal financial assistance.

Contractor assures State that at all times during the performance of this Contract that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied to benefits of service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor upon which assurance State relies.

Contractor shall provide any information and assistance necessary for State to fulfill any federal VOi/TiS grant requirements for funds for the financing of this Contract.

11. CONTACT PERSON

The contact person for the State is;
Shannon Marcoux, Facilities Operations Manager
NOB 2 South, 280 State Drive
Waterbury, VT 05671-2000
shannon.marcoux@vermont.gov
Office: 802-241-0017
Cell: 802-535-8658

The contact person for the Contractor is;
Cole Carter, General Counsel
CoreCivic
10 Burton Hills Boulevard
Nashville, TN 37215
Cole.Carter@corecivic.com
615-263-3000

And

Warden Martin Frink
Tallahatchie County Correctional Facility
415 U.S. Highway 49 North
Tutwiler, MS 38963
Martin.Frink@corecivic.com
662-345-6567

Replacement of the individuals named herein may be accomplished by written notice to the other party.

12. COMMISSARY

Commissary commissions will be collected and deposited into the Inmate Recreation Fund for all Vermont correctional facilities.

ATTACHMENT B – PAYMENT PROVISIONS

The maximum dollar amount payable under this contract 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.

1. Prior to commencement of work and release of any payments, Contractor shall 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 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, rates of pay, 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 shall 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 shall be submitted not more frequently than monthly.
5. Invoices shall be submitted to the State at the following address: VTDOC Business Office NOB 2 South, 280 State Drive, Waterbury, VT 05671-2000.
6. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are as follows:

Except as otherwise provided herein, the entire cost to State for housing inmates with Contractor under the terms of this Agreement shall be fixed at \$71.00 per inmate per day for the first year of this contract. On October 1, 2019 and every subsequent October in which this Agreement or any renewal term is in effect, the then current rates shall increase. The rates for the four-year term shall be as follows:

Year One: \$71.00
Year Two: \$72.99
Year Three: \$75.04
Year Four: \$77.15

State shall be billed monthly by the Contractor. State shall pay Contractor for the day Contractor takes custody of an inmate and every subsequent day the inmate remains in the custody of the Contractor, except Contractor shall not be paid for the day the inmate ceases to be in the custody of Contractor. Contractor shall present VTDOC with an invoice no later than 15 days after the close of the month. Payment shall be made within thirty (30) days of a correct invoice. State and Contractor shall use all reasonable efforts to ensure that an invoice is reviewed and, if necessary, corrected in a timely fashion.

State shall receive an annual credit of Fifty Thousand Dollars (\$50,000.00) to offset its expense for the on-site contract monitors. This credit shall be deducted on each monthly invoice in the amount of four thousand one hundred sixty-six dollars and sixty-seven cents (\$4,166.67). Beginning on October 1, 2019 and continuing each year that this Agreement or any renewal term is in effect, the annual credit for the on-site contract monitor shall increase by three percent (3%) over the prior year's credit and the amount deducted on the monthly invoice shall be adjusted accordingly.

State shall reimburse Contractor for State inmate postage on a monthly basis as outlined in Attachment A section 4.17.

Commissary profits shall be paid to State on a monthly basis via check mailed to the VTDOC Business Office. Contractor shall provide a detailed statement of commissary sales to State inmates separated by commissionable and non-commissionable items.

The parties acknowledge and agree that liquidated damages included in this contract applicable to Attachment A section 4.23.20 shall not apply in situations where the Contractor's failed performance is related to events or actions outside of the control of the Contractor. Liquidated damages are intended to represent estimated actual damages and are not intended as a penalty and Contractor shall pay them 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. Liquidated damages shall be calculated at \$294.03 per day.

The parties recognize that the rates agreed upon in this Contract are based on current applicable law, court orders, regulations, policies, procedures, guidelines, VTDOC Directives and Guidance Documents and ACA standards in effect as of the date the Contract is signed. If changes in current applicable law, regulations, applicable policies, procedures, guidelines, VTDOC Directives and Guidance Documents or ACA standards increase the Contractor's costs to comply with its obligations under this Contract, the parties agree to review the changes and negotiate a modification in the form of an amendment to this contract in good faith to provide adequate compensation for the changes.

**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
INFORMATION TECHNOLOGY PROFESSIONAL SERVICES
TERMS AND CONDITIONS (rev. 3/29/18)

1. OWNERSHIP AND LICENSE IN DELIVERABLES

1.1 Contractor Intellectual Property. Contractor shall retain all right, title and interest in and to 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 ("Contractor Intellectual Property"). Should the State require a license for the use of Contractor Intellectual Property in connection with the development or use of the items that Contractor is required to deliver to the State under this Contract, including Work Product ("Deliverables"), the Contractor shall grant the State a royalty-free license for such development and use. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Intellectual Property, provided the State shall be granted an irrevocable, perpetual, non-exclusive royalty-free license to use any such Contractor Intellectual Property that is incorporated into Work Product.

1.2 State Intellectual Property. 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 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.

1.3 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.

2. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

2.1 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.

2.2 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.

2.3 Confidentiality of State Information. In performance of this Contract, and any exhibit or schedule hereunder, the Party 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 hereto as Attachment. Before receiving or controlling 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.

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

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.

3. SECURITY OF STATE INFORMATION.

3.1 Security Standards. To the extent Contractor has access to, processes, handles, collects, transmits, stores 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 modeled on NIST *Special Publication 800-39* 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 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.

3.2 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.

4. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

4.1 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 pending 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 services 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 services 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.

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

- (i) 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.
- (ii) 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.
- (iii) 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.

5. 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 \$5,000,000.00 per claim, \$10,000,000.00 aggregate. To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, Contractor shall maintain first party Breach Notification Coverage of not less than \$1,000,000.00.

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

With respect to the first party Breach Notification Coverage, Contractor shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Contract.

6. REMEDIES FOR DEFAULT. 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.

7. TERMINATION

7.1 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 Data, State Intellectual Property or other State information and materials are to be transferred in connection with termination. Contractor shall assist the State in exporting and extracting any and all State data, 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.

7.2 Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to State all State Intellectual Property and State Data (including without limitation any Deliverables for which State has made payment in whole or in part), 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.

8. DESTRUCTION OF STATE DATA. At any time during the term of this Contract within thirty days of (i) the State's written request or (ii) termination or expiration of this Contract for any reason, Contractor shall securely dispose of all copies, whether in written, electronic or other form or media, of State Data according to National Institute of Standards and Technology (NIST) approved methods, and certify in writing to the State that such State Data has been disposed of securely. Further, upon the relocation of State Data, Contractor shall securely dispose of such copies from the former data location according to National Institute of Standards and Technology (NIST) approved methods 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.

9. IRS TERMS IF FEDERAL TAX INFORMATION WILL BE PROCESSED OR STORED (Per IRS Publication 1075)

To the extent Contractor's performance under this Contract involves the processing or storage of Federal tax information, then, pursuant to IRS Publication 1075, the following provisions shall apply in addition to any other security standard or requirements set forth in this Contract:

A. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by its employees with the following requirements:

1. All work will be done under the supervision of the Contractor or the Contractor's employees.
2. The Contractor and the Contractor's employees with access to or who use Federal tax information must meet the background check requirements defined in IRS Publication 1075.
3. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
4. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
5. The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
6. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the State or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard

copy printouts and will provide the State or its designee with a statement containing the date of destruction, description of material destroyed, and the method used.

7. All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
8. No work involving Federal tax information furnished under this Contract will be subcontracted without prior written approval of the IRS.
9. The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
10. The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

B. CRIMINAL/CIVIL SANCTIONS:

1. Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
2. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

3. Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
4. Prior to Contractor having access to Federal tax information, Contractor shall certify that each Contractor employee or other individual with access to or who use Federal tax information on Contractor's behalf pursuant to this Contract understands the State's security policy and procedures for safeguarding Federal tax information. Contractor's authorization to access Federal tax information hereunder shall be contingent upon annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification, and at least annually afterwards, Contractor will be advised of the provisions of IRCs 7431, 7213, and 7213A (see IRS Publication 1075 *Exhibit 4, Sanctions for Unauthorized Disclosure*, and *Exhibit 5, Civil Damages for Unauthorized Disclosure*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches (See Publication 1075, Section 10). For both the initial certification and the annual certification, the Contractor must sign a confidentiality statement certifying its understanding of the security requirements.

C. INSPECTION:

The IRS and the State, with 24 hours' notice, shall have the right to send its officers, employees, and inspectors into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. for compliance with the requirements defined in IRS Publication 1075. The IRS's right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology assets that access, store, process or transmit Federal tax information. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

10. EXECUTIVE ORDER 2-18 INTERNET NEUTRALITY IN STATE PROCUREMENT:

To the extent Contractor's performance under this Contract involves the provision of services for accessing the Internet, the following provisions shall apply:

Definitions. As used in this agreement, the following definitions apply:

1. "Broadband Internet Access Service" means a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all

Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service that the State finds to be providing a functional equivalent of the service described in the previous sentence, or that is used to evade the protections set forth in this section.

2. "Reasonable Network Management" means a network management practice that has a primarily technical network management justification but does not include other business practices. A network management practice is reasonable if it is primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.

Public Disclosure. Contractor shall publicly disclose to all of its customers in the State of Vermont (including but not limited to the State itself) accurate information regarding the network and transport management practices (including cellular data and wireless broadband transport), performance, and commercial terms of its broadband Internet access services sufficient for: a) consumers to make informed choices regarding use of such services and for content, application, service; and b) device providers to develop, market, and maintain Internet offerings. Compliance with the Federal Communications Commission's transparency rule, as amended by 83 Fed. Reg. 7852, 7922 (Feb. 22, 2018), satisfies Contractor's public disclosure requirements under this paragraph.

Provision of Services. Contractor shall not, with respect to any customer in the State of Vermont (including but not limited to the State itself):

- A. Block lawful content, applications, services, or nonharmful devices, subject to reasonable network management that is disclosed to its customers;
- B. Throttle, impair or degrade lawful Internet traffic on the basis of Internet content, application, or service, or use of a non-harmful device, subject to reasonable network management that is disclosed to its customers;
- C. Engage in paid prioritization or providing preferential treatment of some Internet traffic to any Internet customer;
- D. Unreasonably interfere with or unreasonably disadvantage either:
 - i. A customer's ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of their choice; or
 - ii. An edge providers' ability to make lawful content, applications, services, or devices available to a customer;

Compliance. Contractor agrees to provide the State, upon request, at any time during the term of this contract, records, documentation, or any other information as required to demonstrate Contractor's compliance with the requirements of this section.

Attachment C is modified by adding to Section 7 titled, Defense and Indemnity the following;

"If the Office of the Attorney General or other representative of the State tenders, in writing, a claim and/or lawsuit to Contractor for defense and indemnification in accordance with the aforementioned paragraph, the Contractor shall respond, in writing, to the Attorney General or State within ten (10) business days of such tender. In the event a response to the claim or suit is required prior to the expiration of the ten (10) business days period of time, including but not limited to court action, the Contractor will be so notified. The Contractor's response to the Attorney General's or State's tendering of any such claim or lawsuit shall include an acknowledgment of receipt of the claim and/or lawsuit, a response on whether Contractor will accept or decline the tendering of any such claim and/or lawsuit and, if accepted, the identity of counsel retained to defend any such claim and/or lawsuit. In the event the Contractor does not comply with any aspect of this provision, and such non-compliance also constitutes a material violation of this provision, as so determined either judicially or by mutual agreement of the parties, the Contractor shall be responsible for any and all costs and/or fees that were reasonably-incurred by the Attorney General's Office and/or the State as a direct consequence of such non-compliance.

The Contractor agrees to cooperate with the Office of the Attorney General and the State in the investigation and handling of any claim and/or lawsuits filed by inmate(s), and/or other person(s) and/or entity or entities in connection with the Contractor's performance of services under this contract. The Office of the Attorney General and the State will monitor the defense of all claims and/or lawsuits and the Contractor and defense counsel shall cooperate fully with such monitoring. The Office of the Attorney General and the State retain the right to participate, at their own expense, in the defense and/or trial of any claim and/or lawsuit where the Contractor is providing the defense and indemnification of such claim and/or lawsuit. The Office of the Attorney General and the State shall have the right to approve all proposed settlements of such claims and/or lawsuits, which are being made against the State, State agencies and/or State employees. Contractor shall not settle such claims and/or lawsuits without the consent of the Office of the Attorney General. In the event the Office of the Attorney General or the State withholds such consent to settle any such claim and/or lawsuit then, the Contractor shall proceed with the defense of the claim and/or lawsuit but, under those circumstances, the Contractor's liability and indemnification obligations shall be limited to the amount of the proposed settlement."

Attachment C is modified by adding to section 8 General Liability and Property Damage:

Medical Professional Liability:

\$5,000,000 per Occurrence/\$25,000,000 Aggregate

General Liability and Property Damage:

\$5,000,000 per Occurrence/\$25,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$50,000 Fire/Legal/Liability

Automotive Liability:

\$5,000,000 Combined Single Limit

Professional Liability:

\$3,000,000 Per Occurrence and \$3,000,000 Aggregate

Attachment F is modified by replacing section 6 first sentence with the following; Party agrees that it shall comply with the laws of the state where the services are provided 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.

**ATTACHMENT E
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("Agreement") is entered into by and between the State of Vermont Agency of Human Services, operating by and through its Agency of Human Services, Department of Corrections ("Covered Entity") and CoreCivic ("Business Associate") as of 10/01/2018 ("Effective Date"). This Agreement supplements and is made a part of the contract/grant to which it is attached.

Covered Entity and Business Associate enter into this Agreement to comply with 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.

"Agent" means those person(s) who are agents(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).

"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 in 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" or PHI shall have the meaning given in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Agency.

"Security Incident" means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.

"Services" includes all work performed by the Business Associate for or on behalf of Covered Entity that requires the use and/or disclosure of protected health information to perform a business associate function described in 45 CFR § 160.103 under the definition of Business Associate.

“Subcontractor” means a person or organization to whom a Business Associate delegates a function, activity or service, other than in the capacity of a member of the workforce of the Business Associate. For purposes of this Agreement, the term Subcontractor includes Subgrantees.

2. Identification and Disclosure of Privacy and Security Offices. Business Associate and Subcontractors shall provide, within ten (10) days of the execution of this agreement, written notice to the Covered Entity’s contract/grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

3. Permitted and Required Uses/Disclosures of PHI.

3.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services, as specified in the underlying grant or contract with Covered Entity. The uses and disclosures of Business Associate are limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the underlying agreement. 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.

3.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents and Subcontractors in accordance with Sections 9 and 18 or, (b) as otherwise permitted by Section 3.

3.3 Business Associate shall be directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Covered Entity, and for impermissible uses and disclosures, by Business Associate’s Subcontractor(s), of the PHI that Business Associate handles on behalf of Covered Entity and that it passes on to Subcontractors.

4. Business Activities. Business Associate may use PHI received in its capacity as a Business Associate to Covered Entity if necessary for Business Associate’s proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as Business Associate to Covered Entity 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 the 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 or entity to notify Business Associate, within two (2) business days (who in turn will notify Covered Entity within two (2) business days after receiving notice of a Breach as specified in Section 6.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes

identified in Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.

5. Safeguards. Business Associate, its Agent(s) and Subcontractor(s) shall implement and use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. With respect to any PHI that is maintained in or transmitted by electronic media, Business Associate or its Subcontractor(s) shall comply with 45 CFR sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements). Business Associate or its Agent(s) and Subcontractor(s) shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.

6. Documenting and Reporting Breaches.

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents) becomes aware of any such Breach, and in no case later than two (2) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

6.2 Business Associate shall provide Covered Entity with the names of the individuals 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 individuals, as set forth in 45 CFR § 164.404(c), and, if requested by Covered Entity, 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 to it. Business Associate shall require its Subcontractor(s) to agree to these same terms and conditions.

6.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach, as that term is defined in 45 CFR § 164.402, and therefore does not necessitate notice to the impacted individual(s), it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity. It shall also provide Covered Entity with 1) the name of the person(s) 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. When a breach is the responsibility of a member of its Subcontractor's workforce, Business Associate shall either 1) conduct its own risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Business Associate shall make these assessments and reports available to Covered Entity.

6.4 Business Associate shall require, by contract, a Subcontractor to report to Business Associate and Covered Entity any Breach of which the Subcontractor becomes aware, no later than two (2) business days after becomes aware of the Breach.

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. If requested by Covered Entity, Business Associate shall make its mitigation and corrective action plans available to Covered Entity. Business Associate shall require a Subcontractor to agree to these same terms and conditions.

8. **Providing Notice of Breaches.**

8.1 If Covered Entity determines that an impermissible acquisition, access, use or disclosure of PHI for which one of Business Associate's employees or agents was responsible constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity, Business Associate shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When requested to provide notice, 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. The cost of notice and related remedies shall be borne by Business Associate.

8.2 If Covered Entity or Business Associate determines that an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Business Associate or its Subcontractor provide notice, Business Associate shall either 1) consult with Covered Entity about the specifics of the notice as set forth in section 8.1, above, or 2) require, by contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in section 8.1

8.3 The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to Covered Entity.

8.4 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).

8.5 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 received from Covered Entity or created or received by Business Associate on behalf of Covered Entity in which the Subcontractor agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. Business Associate must enter into this Business Associate Agreement before any use by or disclosure of PHI to such agent. 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 Business Associate 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 three (3) 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 three (3) 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 three (3) 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 received from Covered Entity or created or received by Business Associate on behalf of Covered Entity available to the Secretary

of 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 of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 19.8.

14.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach and Covered Entity may terminate the contract or grant without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate the contract or grant without liability or penalty if Covered Entity believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available to Covered Entity at law, in equity, or under the contract or grant, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

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, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this contract or grant 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 the PHI. Business Associate shall certify in writing for 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 provide to Covered Entity notification of any conditions that Business Associate believes make the return or destruction of PHI infeasible. If Covered Entity agrees that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible for so long as Business Associate maintains such PHI. This shall also apply to all Agents and Subcontractors of Business Associate.

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 that it is 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 AHS 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. Security Rule Obligations. The following provisions of this section apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

18.1 Business Associate shall implement and use administrative, physical, and technical safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312 with respect to the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to protect such Electronic PHI.

18.2 Business Associate shall ensure that any Agent and Subcontractor to whom it provides Electronic PHI agrees in a written agreement to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI. Business Associate must enter into this written agreement before any use or disclosure of Electronic PHI by such Agent or 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 Electronic PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any Agent or Subcontractor without the prior written consent of Covered Entity.

18.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an Agent or Subcontractor). Business Associate shall provide this written report as soon as it becomes aware of any such Security Incident, and in no case later than two (2) business days after it becomes aware of the incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

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

19. Miscellaneous.

19.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the contract/grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the contract/grant continue in effect.

19.2 Business Associate shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.

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

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

19.5 As between Business Associate and Covered Entity, Covered Entity owns all PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity.

19.6 Business Associate shall abide by the terms and conditions of this Agreement with respect to all PHI it receives from Covered Entity or creates or receives on behalf of Covered Entity 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.

19.7 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 the PHI may not be sold without Agency's or the affected individual's written consent.

19.8 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.

ATTACHMENT F
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 through (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.

AHS ATT. F 5/16/2018