

ADVERTISEMENT

**Department of Corrections  
Out of State  
Incarcerated Inmate Housing**

The Vermont Department of Corrections is soliciting proposals to provide for the confinement and supervision for up to 500 Vermont inmates in an out of state facility. These inmates are Minimum, Medium and Close custody offenders under the Vermont Department of Corrections classification system. However they may score at higher custody levels under other states classification systems. Please provide appropriate information regarding your state's classification system as well as laws and requirements for housing inmates from other states. Please provide a quote that includes all of the following:

- A) Cost of housing based on a tiered system determined by the inmate population (1-100 inmates, 101-200 inmates, 201-300 inmates, ect..), to include starting per diem rate as well as any inflationary costs during the life of the contract.
- B) Transportation of these inmates from Springfield, Vermont to your site for up to 30 inmates twice per month,
- C) Medical to include the vendor being responsible for inpatient hospital and surgery charges for the first 72 hours an inmate is confined in a hospital or the first twenty thousand dollars (\$20,000.00) whichever comes first,
- D) Contractor shall provide an annual credit in the amount of Fifty Thousand Dollars (\$50, 000.00) for contract monitoring.
- E) Contractor shall provide the Vermont Contract Monitor office space that has a lock which is not master keyed, a desk, chair, telephone/fax/computer lines (for internet access only). Contractor will not be responsible for fax or non-business related telephone costs.
- F) Contractor shall ensure the facilities used have video conferencing capabilities. VTDOC will be invoiced monthly for any and all costs associated with video conferencing use by the VTDOC.
- G) Contactor agrees to use the Vermont Department of Corrections Classification, Disciplinary and Grievance systems. VTDOC will provide training in these areas.
- H) Please include any pertinent information should your company build in the Northeast. Include time frame and per diem cost.

The contractor shall provide necessary care and treatment, to include food, clothing, appropriate housing, education, training, work programs, and all routine medical, mental health and dental care. The contractor shall provide safe, supervised confinement and maintain proper discipline and control. The contractor shall faithfully execute the sentences and orders of the committing courts.

For submission format and guidelines contact Ray Flum, Supplemental Housing Manager, Department of Corrections, 103 South Main Street, Waterbury, VT 05671-1001.

**STATE OF VERMONT  
AGENCY OF HUMAN SERVICES  
DEPARTMENT OF CORRECTIONS**

**103 South Main Street  
Waterbury, Vermont 05671-1001**

# OUT OF STATE INCARCERATED INMATE HOUSING

## Request for Proposal

January 2011

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## 1. Introduction

The Vermont Department of Corrections is seeking proposals to provide for the confinement and supervision up to 500 Vermont inmates in an out of state facility. These inmates are Minimum, Medium and Close custody offenders under the Vermont Department of Corrections classification system. However they may score at higher custody levels under other state's classification systems. Please provide appropriate information regarding your state's classification system as well as laws and requirements for housing inmates from other states. Please include information concerning the transportation of these inmates from Springfield, Vermont to your site. Please provide the following quotes A) Cost of housing based on tiers, B) Cost of transportation, and C) Inclusive cost for housing and transportation. The contractor shall provide care, incarceration and access to services to Vermont inmates. The care includes providing necessary food, clothing, appropriate housing, and all necessary routine medical, mental health and dental care (consistent with Appendix 1 – Description of Health Services). The contractor shall provide facility/facilities adequate to meet the physical needs of Vermont inmates, and provide programs of education, training, and treatment. The contractor shall provide safe, supervised confinement and maintain proper discipline and control of the environment. The contractor shall faithfully execute the sentences and orders of the committing courts. This contract may have duration of up to two (2) years with the possibility of up to two (2) years of extensions, depending on available funding and at the discretion of the State of Vermont. In the event the State of Vermont, its agents and/or employees are subject to complaint and/or suit in connection with the services provided and/or fail to provide pursuant to the contract, the contractor will be responsible for the defense and indemnification. See Appendix 2, Attachment C, paragraph 5.

## 2. Procurement Overview

The Vermont Department of Corrections (DOC) is issuing this Request for Proposals (“RFP”) to execute a contract up to 500 incarcerated beds in an out of state facility.

### **2.1 Contract Term**

The Department intends to award this contract for a period of a two (2) year period beginning 6/1/2011 and ending 5/31/2013, with the right to extend the contract for two (2) additional one year terms, depending on available funding and at the discretion of the State. Standard conditions by which the contract will be governed are detailed in Appendices 2, 3 and 4.

### **2.2 Point of Contact**

Questions concerning this Request for Proposals must be directed in writing by mail, e-mail or fax to:

Ray Flum, Supplemental Housing Manager  
[ray.flum@ahs.state.vt.us](mailto:ray.flum@ahs.state.vt.us)  
Vermont Department of Corrections  
103 South Main Street  
Waterbury, VT 05671-1001  
Fax #: 802-241-1933

### **2.3 Bidder's Conference**

Prospective proposers will have an opportunity to ask questions regarding this procurement at a bidder's conference scheduled for **January 27, 2011 at 10:00 AM ET**. The conference will be held at the following location:

Vermont Department of Corrections  
Chapel Conference Room  
103 South Main Street  
Waterbury, Vermont 05671-1001  
802-241-1934

Attendance at the bidder's conference is not mandatory but is strongly recommended. The conference is intended to be an interactive exchange of information, with appropriate State of Vermont staff available to provide clarification and/or answers to questions.

Proposers must submit written questions and discussion points in advance of the bidder's conference. Written copies of the submitted questions will be distributed to attendees of the bidder's conference. The State may choose to respond verbally at the conference but the written answers to questions posed from the bidders will be considered the official answer(s) those questions. Information and answers to questions will **not** be transcribed for distribution to interested parties not in attendance.

## **2.4 Submission Deadline and Address**

To be considered a valid proposal, one original, 6 duplicates, as well as compact disk (s) version must be received at the following address no later than **12:00 noon PM ET on February 10, 2011**. **Faxes and late responses will not be accepted.**

Ray Flum, Supplemental Housing Manager  
Vermont Department of Corrections  
103 South Main Street  
Waterbury, Vermont 05671-1001

A public bid opening will be held on **February 10, 2011** at 1:30 PM ET. At the public bid opening, the State of Vermont reserves the right to not disclose items which will compromise contract negotiations.

The Department reserves the right to reject, in whole or in part, any and all proposals received by reason of this Request for Proposals. The Department will not pay for any information herein requested nor will the Department be responsible for any costs incurred by the proposer. All proposals shall become the property of the Department upon submission. The Department reserves the right to negotiate final price and terms during the contract negotiation phase. Any proprietary information offered by proposer should be clearly indicated and the basis, upon which such proprietary interest is asserted.

## **2.5 Letters of Intent**

Proposers are required to submit a letter of intent by **4:30 PM ET January 20, 2011** and sent to the point of contact identified in section 2.2 of this RFP. The letter of intent will not be considered binding. The letters shall result in the inclusion of the interested party on the distribution list for future correspondence relative to this offer.

## **2.6 Request for Proposal Amendments**

The State reserves the right to amend the RFP at any time prior to the proposal due date by issuing written addenda. All written addenda to the RFP will become part of the contract.

# **3. Proposal Submission Requirements**

## **3.1 General**

The proposer and any subcontractors, if any, must furnish evidence of experience in providing these services for public entities. Preference will be given to proposers with relevant experience.

## **3.2 Proposal Format**

- 3.2.1** These instructions, formats and approaches for the development and presentation of proposal information are designed to ensure the submission of data essential to the understanding and comprehensive evaluation of the vendor's proposal. There is no intent to limit the content of the proposals nor in any way inhibit a presentation in other than the vendor's favor. The vendor may include such additional information or data as may be appropriate, but may not exclude any portion requested in this document.
- 3.2.2** Proposals should be submitted on double-sided (8 1/2" x 11") paper without permanent binding; loose-leaf binding is permissible. Any attachments or exhibits must be reduced to letter size. Ink and paper colors must not prevent entire proposal from being photocopied. The use of divider tabs is required.
- 3.2.3** Proposers must submit an original and 6 copy of the proposal as well as compact disk (s) version. The original should be clearly marked on the outside cover as such. All signatures in the original proposal must be in blue ink.

## **3.3 Proposal Contents**

Each of the major sections identified below should be separately tabbed, for easy identification. Every page of the proposal must be numbered sequentially, including attachments and appendices.

### **3.3.1 Transmittal Letter**

A transmittal letter must accompany the proposal. The letter must be in the form of a standard, business letter signed in blue ink by an individual authorized to legally enter into a contract on behalf of the proposer. The transmittal letter must include a statement indicating that the vendor is a corporation or legal entity. The transmittal letter must identify individuals involved in the preparation of the proposal. The transmittal letter must contain a statement identifying any subcontractor that will be used in their project. If a subcontractor is used, a transmittal letter must be signed by them indicating the scope of their work to be performed and their qualification. The transmittal letter must contain a statement acknowledging the Customary State Contract provisions described in Item #6. The transmittal letter must state the proposer has read, understands and is able to comply with all standards and participation requirements described in the RFP. It must include a statement of acceptance, without qualification, of all terms and conditions outlined in this RFP. Any suggestions for alternate language, which the Department is under no obligation to accept, must be clearly stated.

The transmittal letter must state the proposer had sole and complete responsibility for the completion of all services provided under the contract, including any and all subcontractors, except for those items specifically defined as Department responsibilities. The transmittal letter must contain a statement in which the proposer certifies that, in connection with this contract, the proposal was developed independently, without collusion, conflict of interest, consultation, communications or agreement for the purpose of restricting competition,

as to any matter relating to the proposal of any other proposer or competitor. In addition, the proposer must state the prices quoted have not been knowingly disclosed by the proposer prior to award, either directly or indirectly, to any other proposer or competitor. The transmittal letter must contain a statement attesting to the accuracy and truthfulness of all information contained in the proposal. The transmittal letter must also contain information regarding any state statutes or other applicable provision of law that may at any level impact the requirements of services to be performed pursuant to this agreement.

The transmittal letter must contain a statement of Affirmative Action that the proposer does not discriminate in its employment practices with regard to race, color, religion, age (except as provided by law), sex, sexual orientation, marital status, political affiliation, national origin or handicap and complies with all applicable provisions of Public Law 101-336, American Disabilities Act.

**3.3.2 Executive Summary**

The Executive Summary should provide an overview of the proposing organization and a general description of the approach to meet the requirements of the RFP. It should also identify the proposer’s primary contact, their address, telephone number and fax number. (The Executive Summary is generally no longer than two single-spaced pages.) It must briefly state the proposer’s understanding of the project objective, and the role and responsibility of the vendor in meeting the objectives. Subcontractors must provide an Executive Summary as well.

**3.3.3 Corporate Background and Experience**

Provide a synopsis of the company, years in business, experience with the service proposed, special areas of expertise, etc. Subcontractors must provide the same information.

**3.3.4 Financial Stability**

In addition to the bonding and insurance requirements that will be required of successful candidates, the proposal must demonstrate that the proposer is currently financially stable and the future financial conditions are not likely to jeopardize the proposer’s ability to provide service to the Department. This should be in the form of Audited Annual Financial Statements. Subcontractors must also provide evidence of financial stability.

**3.3.5 References**

The proposal must identify at least ten (10) awarded contracts/bids who can be contacted regarding their recent experiences with the proposer. The references must be specific as to the nature of the experience with the proposer and include contact person’s name, business address and phone number.

**3.3.6 Key Personnel**

The proposer must identify key personnel, their position and job description as well as a current resume for all key personnel. In addition, this section should clearly delineate how their responsibility and authority are divided.

**4. Evaluation Criteria**

A contract award will be made to the proposer whose proposal is determined to be the most advantageous to the State, taking into account price and other evaluation criteria as set forth in this RFP. Staff of other agencies and consultants may be involved in the evaluation of the proposals. The DOC reserves the right to reject any and all proposals submitted in response to this RFP.

During the evaluation process, proposers may be contacted for the purpose of obtaining clarification of their response. However, no clarification will be sought if a proposer completely fails to address a feature contained in the RFP document. If the failure was in response to a mandatory feature, the proposer may be disqualified.

Proposals will then be evaluated and weighted using the following distribution between experience, technical and price:

|                                   |     |
|-----------------------------------|-----|
| Experience (including references) | 30% |
| Technical                         | 40% |
| Price                             | 30% |

The six criteria below are listed in no particular order and will be given significant consideration. Although the criteria below are material factors, they are not the sole or necessarily the determining factors in proposal evaluation. The entire proposal package will be examined and the proposal satisfying most of the Department’s needs will be awarded the contract.

- 4.1** Experience in providing the services required under this contract.
- 4.2** The quality of the incarcerated environment, including, but not limited to, access to treatment services, medical services, programs, etc.
- 4.3** The distance from the facility to the State of Vermont.
- 4.4** Facility(ies) is accredited by the American Correctional Association. If not accredited, can demonstrate standards compliance.
- 4.5** Facility(ies) is accredited for health care by the National Commission on Correctional Healthcare and consistent with Appendix 1, Health Services. If not accredited, can demonstrate standards compliance.
- 4.6** The per diem rate of incarcerated beds, including transportation to and from a facility in the State of Vermont.

As part of its evaluation, the State may conduct interviews with one or more proposers. In such an event, proposers may be required to travel to Vermont, at their own expense, to participate in an on-site interview. Conversely, the State may elect to travel to the offeror’s headquarters to conduct the interview, as well as tour its facilities.

Upon completion of the evaluation process, the Commissioner of the Department of Corrections may select a proposer with which to negotiate a contract, based on the evaluation findings and other such criteria as deemed relevant for ensuring that the decision is made in the best interest of the State. In the event the State is successful in negotiating with the proposer, the State will issue a notice of award. In the event the State is not successful in negotiating a contract with this proposer, the State reserves the option of negotiating with another proposer. The State may cancel the procurement and make no award, if that is determined to be in the State's best interest.

## **5. Proposal Process**

### **5.1 Acceptance of Proposals**

- 5.1.1** Each proposer may submit one (1) proposal. Alternate proposals will not be allowed and will cause the rejections of the alternate proposal and any other proposal submitted by the proposer.
- 5.1.2** The State will accept all proposals properly submitted. After receipt of proposals, the State reserves the right to sign a contract, without negotiation, based on terms, conditions and premises of the RFP and the proposal of the selected proposer. Proposals must be responsive to all requirements in the RFP in order to be considered for contract award.
- 5.1.3** The proposal and its conditions must remain valid for six (6) months from the date of proposal submission.
- 5.1.4** The State reserves the right to waive minor irregularities in proposals, providing such action is in the best interest of the State. Where the State may waive minor irregularities, such waiver shall in no way modify the RFP requirements or excuse the proposer from full compliance with RFP and other contract requirements if the proposer is awarded the contract.
- 5.1.5** The State also reserves the right to request proposal clarification or correction, reject any or all proposals received, or cancel the procurement, according to the best interest of the State.
- 5.1.6** In accordance with current State of Vermont policy and procedures, the contract may include performance based measures as well as other specific measures to be determined during the contract negotiation process. These measures may include both the possibility of bonuses for superior performance and penalties for inferior performance.

### **5.2 Proposal Amendment and Rules for Withdrawal**

- 5.2.1** Prior to the proposal due date a submitted proposal may be withdrawn by submitting a written request to the point of contact identified in section 2.2 of this RFP. Withdrawal notice must be signed by the proposer's authorized agent.
- 5.2.2** Proposers are allowed to make amendments to their proposals if the change is submitted by the proposal due date subject to the conditions outlined in Subsection 4.1.1. The submission should be clearly labeled as Amendment to Proposal. Unless requested by Vermont Department of Corrections, the State will not accept any amendments, revisions or alterations to proposals after the proposal due date.

### **5.3 Cost of Preparing Proposals**

All costs incurred by the proposers during the preparation of their proposals and for other procurement related activities will be the sole responsibility of the proposers. The State will not reimburse the proposers for any such costs.

### **5.4 Disposition of Proposals**

- 5.4.1** The successful proposal will be incorporated by reference into the resulting contract and will be a matter of public record. If the proposal includes material that is considered by the proposer proprietary and confidential under Vermont law, the proposer shall clearly designate the material as such, explaining why such material should be considered confidential.
- 5.4.2** The proposer must identify each page or section of the proposal that they believe is proprietary and confidential, with sufficient grounds to justify each exemption from release, including the prospective harm to the competitive position of the proposer if the identified material were to be released. A general statement that an entire proposal is proprietary is not acceptable.
- 5.4.3** All material submitted by proposers becomes the property of the State of Vermont, which is under no obligation to return any material submitted by a proposer in response to this RFP. The State shall have the right to use all systems concepts, or adaptations of those ideas, contained in any proposal, and this right will not be affected by selection or rejection of the proposal.

### **5.5 Freedom of Information and Privacy Act**

Proposers should be aware that all materials associated with the procurement are subject to the terms of the Freedom of Information Act, the Privacy Act and all rules, regulations and interpretations of these Acts. By submission of a proposal, the proposer agrees that the Privacy Act of 1974, Public Law 93-579, and the Regulations and General Instructions issued pursuant thereto, are applicable to this contract, and all subcontractors hereunder.

**5.6 Vermont Tax ID Number**

A Vermont business account tax number is required if the contractor is a corporation or if the Contractor, under whatever form of business, has employees who are subject to Federal Income tax withholding and who perform their services within the State of Vermont. Contracts cannot be executed without a Vermont Tax ID.

**5.7 Use of Subcontractors**

The prime contractor will be responsible for all the work to be performed under this contract. Proposers must identify proposed subcontractors in their proposals, in the manner described within the proposal submission instructions. NOTE: In the event that a contract is procured, the contractor shall not assign or subcontract the performance of this agreement or any portion thereof to any other contractor without the written approval of the State of Vermont. See Appendix 2, Attachment C, paragraph 13.

**5.8 Bid and Performance Bond Requirements**

The selected Contractor may be required to provide a performance bond before the effective date of the contract. The performance bond may be in the form of a surety bond from a company qualified to do business in the State of Vermont. More information regarding bond requirements will be provided during contract negotiations.

## APPENDIX 1 – DESCRIPTION OF HEALTH SERVICES

It is the intent of the State that inmates receive care comparable to that available to inmates in Vermont. The Contractor's written policies and procedures will describe health services, medical services 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.

### *A. Reception 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 Contractor's facility. This screening shall be conducted by a qualified medical professional and shall include review of State medical information and the following:

- 1) inquiry into current and past illnesses, health problems and conditions;
- 2) any past history of serious infectious or communicable illness, and any treatment or symptoms (e.g., chronic cough, lethargy, weakness, weight loss, loss of appetite, fever, night sweats) suggestive of such illness;
- 3) mental illness, including suicide risk;
- 4) dental problems;
- 5) allergies;
- 6) medications taken and special health (including dietary) requirements;
- 7) use of alcohol and other drugs, and any history of associated withdrawal symptoms;
- 8) other health problems designated by the responsible physician or medical professional performing the screening.
- 9) provide education, access, and obtain applicable advance directive forms which are germane to the specific inmate (s) as well as the state/jurisdiction in which the inmate is housed under the supplemental housing contract
- 10) observation of the following:
  - behavior, which includes state of consciousness, mental status (including suicidal ideation), appearance, conduct, tremors and sweating;
  - body deformities and ease of movement;
  - persistent cough or lethargy; and
  - condition of skin, including trauma markings, bruises, lesions, jaundice, rashes, infestations and needle marks or other indications of drug abuse.

### *B. Access to Services*

At the time of initial intake, each inmate will be provided with a health care services orientation and information on how to access health care services while in the facility. The orientation will include:

- 1) purpose of intake history and physical evaluation, provision of emergency services, pharmaceutical services and policies, and infirmary and in-patient services;
- 2) specific sick call times and procedures;
- 3) procedures for obtaining physical and mental health care services.
- 4) health care services staffing, and the behavior expected of inmates while in the health care services area;
- 5) grievance procedures

### *C. Physical Examinations*

Physical examinations shall be conducted annually or as clinically indicated. The Contractor shall conduct physical examinations in accordance with requirements of the National Commission on Correctional Health Care standards, including gathering of lab data.

### *D. Sick Call*

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

### *E. Emergency Services*

Contractor is required to provide an immediate response to inmates with emergency health care needs. Contractor will have twenty-four (24) hour physician coverage or telephone on-call coverage and specific written policies and procedures to address emergency response and the emergency transfer of inmates. Contractor shall ensure that an inmate's medical chart accurately and completely documents all services provided by Contractor and community health care providers in emergency situations.

### *F. Inpatient Services*

Contractor shall staff and utilize infirmary beds available at Contractor's facilities for admissions which do not require hospitalization. Inmates requiring respiratory isolation will 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.



### *G. Hospitalization*

Contractor shall identify the need, schedule, coordinate and pay for any inpatient hospitalization and related services for any inmate of the State of Vermont up to the first twenty thousand dollars (\$20,000.00) or 72 hours, which ever comes first. 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. If the State believes that the Contractor is not transporting inmates needing inpatient hospitalization in timely fashion, the State shall audit the case. Failure to reach satisfactory resolution of such a case may be grounds for termination of the contract by the State.

### *H. Specialty Outpatient Services*

Contractor shall arrange for qualified medical specialists to visit the facilities so inmates may be maintained within the security of the Contractor facility. If necessary, an outside referral will be made for services that cannot be provided at the facility. To the degree possible, diagnostic testing will be performed on-site. A referral process will be initiated to provide specialists with all pertinent information needed to facilitate timely diagnosis and treatment. The medical specialist will receive diagnostic testing results, substantive patient history and clinical findings in the form of a written referral.

Contractor shall be responsible for scheduling, authorizing and coordinating all specialty services. All inmates returning from outside hospital stays or clinic visits will be seen immediately upon return by a medical professional, and a progress note regarding the review will be documented in the inmate's health care record. Contractor shall ensure that an inmate's medical chart accurately and completely documents services provided by the community health care provider.

Under no circumstances shall Contractor limit or delay access to specialty services for inmates identified as needing this care. If the State believes that the Contractor is not providing specialty services in a timely fashion, the State shall audit the case. Failure to reach satisfactory resolution of such a case may be grounds for termination of the contract by the State.

### *I. Laboratory Services*

Contractor shall provide lab diagnostic testing. Laboratory testing will include routine, special chemistry and toxicology analysis. The laboratory will meet all applicable state and federal requirements for specimen handling, testing and reporting. All services provided shall meet standards set forth by the American College of Pathology.

### *J. Radiology Services*

A radiology technician will be available to provide radiology services. Inmates will be referred off-site for procedures beyond the scope of services provided on-site. A Board-Certified radiologist will read the studies in a timely manner. The radiology report will be documented and maintained in the inmate's health care record. The Contractor's Medical Director will review, initial and date all radiology reports. A verbal notification of all positive findings will be furnished to the 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.

### *K. Diet Therapy*

Special diets will be available to inmates when medically indicated and ordered. Contractor will document the need and dietary services required. The inmate's orientation to the therapeutic diet will be documented in the health care record. In accordance with NCCHC standards, Contractor shall coordinate reviews of all diets at least every six (6) months with a registered dietitian.

### *L. EKG Services*

Contractor shall provide EKG services and necessary EKG equipment. The EKG contract will provide for immediate reading and reporting of results of EKG. Nursing staff will receive in-service training related to EKG services.

### *M. Medical Prosthetics*

Contractor shall provide prosthetic devices to inmates as medically indicated. Prosthetics will be selected according to community standards, but also must conform to security requirements of the State. The costs associated with providing prosthetics may be borne by the State. In such cases, prior approval by the contract manager is required.

### *N. Optical Services*

Contractor shall identify the need, schedule, coordinate and pay for the dispensing, evaluation, and fitting services of an optometrist. Inmates requesting health care services for visual problems will be evaluated using the Snellen eye chart by nursing staff. If a visual deficiency beyond 20/40 is identified, the inmate will be referred to Contractor's optical service provider.

Contractor shall provide one (1) set of eyeglasses to inmates if prescribed and deemed necessary by the optometrist. Inmates requiring treatment and services beyond the scope of services offered on-site will be transported to specialists in the community. Inmates shall be eligible to receive follow-up eye exams every two (2) years.

*O. Pharmaceuticals*

Contractor shall provide a total pharmaceutical system, including medications prescribed by mental health care providers, which is sufficient to meet the needs of the State inmates. Contractor shall be responsible for the costs of drugs administered under the contract, consistent with the limitations described in Attachment B. Policies, procedures and practices addressing pharmaceuticals will be in compliance with all applicable state and federal regulations.

The pharmaceutical system will have the following components:

- 1) Medication ordered by a qualified provider (physician, psychiatrist, nurse-practitioner, dentist) will be appropriately documented in the MAR and health record.
- 2) A pharmaceutical inventory will be established to facilitate the initiation of pharmaceutical therapy upon the physician's order. An inventory control system will be implemented to ensure the availability of necessary and commonly prescribed medications, and to protect against the loss of pharmaceuticals. All pharmaceuticals will be prepared, maintained and stored under secure conditions.
- 3) An adequate and proper supply of antidotes and emergency medications will be available.
- 4) Contractor will maintain a formulary listing the available medications, and this formulary shall be available to the State.
- 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 non-formulary medication will be made available to the inmate. Consultation with the State on specific cases requiring non-formulary medications should be initiated by the Contractor as necessary.

*P. Medication Administration*

The Contractor shall maintain a medication administration system which meets the needs of State inmates. Medication will be administered to inmates by nurses or other authorized personnel three (3) times daily or as ordered. The administration of each medication will be documented on a medication administration record. Documentation on the medication administration record will clearly indicate those instances when an inmate refuses a medication or is not available to receive a medication. Medication administration times will be adjusted to meet the needs of inmates who participate in work details or classes. If an inmate refuses a specific medication three (3) times, the inmate will be counseled and requested to sign a refusal form.

*Q. Dental Services*

Contractor shall provide on-site dental services which include preventive and restorative care. The initial dental appraisal and instruction in oral hygiene will be conducted at the time of the initial health appraisal by trained registered nurses and 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 will receive in-service training.

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

*R. Hepatitis Treatment*

It is recognized by the Parties that the prevalence of hepatitis in prison populations is higher than the general public. The Contractor will provide appropriate treatment, consistent with NCCHC and/or CDC guidelines, according to protocols developed by the Contractor.

*S. Mental Health Services*

The Contractor shall provide all services related to the mental health needs of State inmates, including assessment, diagnosis, treatment, pharmacology and psychopharmacology. Inmates being transferred to the Contractor will be screened by the State for mental health needs, restrictions and necessary accommodations prior to transfer. Information pertaining to mental health treatment will be conveyed in written form and, if necessary, verbal communication to insure continuity of care. The Contractor will provide written documentation of mental health treatment activities, including refusal of care.

*T. Suicide Prevention and Crisis Intervention*

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

When an inmate experiences psychiatric emergencies or crisis, the Contractor will take all necessary measures to respond to the inmates needs and assure safety of the inmate and staff.

Contractor shall document all relevant information and interactions with suicidal inmates and include relevant information in the inmate's medical chart. Communication with the State shall be initiated if an inmate engages in serious suicidal conduct or shows symptoms of serious psychological deterioration.

#### *U. Health Care Records*

The Contractor shall maintain a problem-oriented health care record, and will include medical, dental, chemical dependency, mental health care information, and advance directives. Contractor will 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.

The standardized health care record shall contain the following information:

- Problem list;
- Completed intake screening form;
- Health appraisal form;
- Clinical (SOAP) 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;
- Place, 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;
- Health Care Services reports;
- Inmate medical grievance forms;
- Documentation of all medical, dental and mental health care services provided, whether from inside or outside the facility.

A health care record will be initiated during the inmate's first health care encounter and shall contain complete and accurate records of health care services provided during the individual's incarceration at Contractor's facilities. The State will 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. The health care provider's signature and title will be recorded for each encounter. All outside health care services, such as laboratory results, or physician consultation reports, will be filed as part of the permanent health care record. Health care records shall be maintained securely and in a confidential manner at all times.

The Parties agree to work collaboratively and cooperatively with respect to resolving any issues pertaining to HIPAA regulations. This may include memoranda of understanding clarifying the Parties respective roles and obligations under the ACT. It is understood that clear and open lines of communication, including sharing of health information, is necessary for the smooth and efficient execution of this contract.

#### *V. Quality Assurance and Improvement Program*

The Contractor shall implement a Quality Improvement Program ("QIP"), as set forth by NCCHC standards. The program will be designed to assure that quality is provided in the most appropriate and cost-efficient manner for the DOC. The program shall allow development of site-specific plans reflective of the facility's health care services systems.

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 QIP 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 will address hand washing, housekeeping, decontamination, disinfection and sterilization of equipment and supplies, medical isolation, infectious and parasitic laundry, 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 will be used to report data and to track the utilization of health care services on a year-to-date basis. All deviations will be reviewed for problem identification. Contractor will monitor the utilization of all health care services provided off-site, as compared to national data on incarcerated populations, and will 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 will 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 will 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 will be responded to within ten (10) days of receipt and included in monthly reporting.

The State and Contractor shall identify personnel who will communicate about the QI program. The Contractor shall provide monthly reports to the State detailing levels of service provided and systems issues encountered. The content and form of these reports shall be determined by the Parties.

*W. NCCHC Accreditation*

The 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. If the accreditation criteria are not met, the State will impose a 30 day warning and grace period. If the accreditation plan criteria are not met after the 30-day warning period, the State reserves the right to impose a \$500.00 penalty per day until the criteria are met.

*X. Inmate Death*

Written policies and procedures shall provide for the prompt notification of the State in case of serious illness, surgery, death or injury. Any death of an inmate assigned to the facility shall be reported immediately to the proper officials. A post-mortem examination shall be conducted on all residents who die while in the custody of the Facility. The Parties shall communicate with each other to determine the most appropriate way to convey notice of an inmate's death to his next-of-kin.

ATTACHMENT C  
CUSTOMARY PROVISIONS FOR CONTRACTS AND GRANTS

1. **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.
2. **Applicable Law.** This Agreement will be governed by the laws of the State of Vermont.
3. **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.
4. **Appropriations:** If appropriations are insufficient to support this Agreement, the State may cancel on a date agreed to by the parties or upon the expiration or reduction of existing appropriation authority. In the case that this Agreement is funded in whole or in part by federal or other non-State funds, and in the event those funds become unavailable or reduced, the State may suspend or cancel this Agreement immediately, and the State shall have no obligation to fund this Agreement from State revenues.
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, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. 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 Party shall notify its insurance company and the State within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the performance of this Agreement.

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.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

7. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverage is in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverage 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.

**General Liability and Property Damage:** With respect to all operations performed under the 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 Per Occurrence  
\$1,000,000 General Aggregate  
\$1,000,000 Products/Completed Operations Aggregate  
\$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

**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: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

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

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

**9. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and if this Subrecipient expends \$500,000 or more in federal assistance during its fiscal year, the Subrecipient is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program specific audit.

The Subrecipient may elect to have a program specific audit if it expends funds under only one federal program and the federal program's laws, regulating or grant agreements do not require a financial statement audit of the Party.

A Subrecipient is exempt if the Party expends less than \$500,000 in total federal assistance in one year.

The Subrecipient will complete the Certification of Audit Requirement annually within 45 days after its fiscal year end. If a single audit is required, the sub-recipient will submit a copy of the audit report to the primary pass-through Party and any other pass-through Party that requests it within 9 months. If a single audit is not required, the Subrecipient will submit the Schedule of Federal Expenditures within 45 days. These forms will be mailed to the Subrecipient by the Department of Finance and Management near the end of its fiscal year. These forms are also available on the Finance & Management Web page at: <http://finance.vermont.gov/forms>

**10. Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter 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. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

**11. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21V.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. Party further agrees to include this provision in all subcontracts.

**12. 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.

**13. 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 the 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.

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.

**14. Child Support:** (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the 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.

**15. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of his Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

Notwithstanding the foregoing, the State agrees that the Party may assign this agreement, including all of the Party's rights and obligations hereunder, to any successor in interest to the Party arising out of the sale of or reorganization of the Party.

**16. No Gifts or Gratuities:** Party shall not give title or possession of any thing 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.

**17. Copies:** All written reports prepared under this Agreement will be printed using both sides of the paper.

**18. 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.

State of Vermont – Attachment C  
Revised AHS – 1-11-11

Appendix 3

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 DEPARTMENT, OFFICE, OR DIVISION OF (\_\_\_\_\_)INSERT DEPARTMENT, OFFICE, OR DIVISION) (“COVERED ENTITY”) AND (\_\_\_\_\_)INSERT NAME OF THE CONTRACTOR) (“BUSINESS ASSOCIATE”) AS OF (\_\_\_\_\_)INSERT DATE) (“EFFECTIVE DATE”). THIS AGREEMENT SUPPLEMENTS AND IS MADE A PART OF THE CONTRACT TO WHICH IT IS AN ATTACHMENT.**

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.

The parties agree as follows:

1. **Definitions.** All capitalized terms in this Agreement have the meanings identified in this Agreement, 45 CFR Part 160, or 45 CFR Part 164.

The term “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.

The term “Individual” includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

The term “Breach” means the acquisition, access, use or disclosure of protected health information (PHI) in a manner not permitted under the HIPAA Privacy Rule, 45 CFR part 164, subpart E, which compromises the security or privacy of the PHI. “Compromises the security or privacy of the PHI” means poses a significant risk of financial, reputational or other harm to the individual.

2. **Permitted and Required Uses/Disclosures of PHI.**

2.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services, as specified in the underlying contract with Covered Entity. 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.

2.2 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 (including subcontractors) in accordance with Sections 8 and 16 or (b) as otherwise permitted by Section 3.

3. **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 (a) 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 (b)

the person notifies Business Associate, within three business days (who in turn will notify Covered Entity within three business days after receiving notice of a Breach as specified in Section 5.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in this Section must be of the minimum amount of PHI necessary to accomplish such purposes.

4. **Safeguards.** Business Associate 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 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 shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.

5. **Documenting and Reporting Breaches.**

5.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI as soon as it (or any of its employees or agents) become aware of any such Breach, and in no case later than three (3) 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.



- 5.2 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.
- 5.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce does not pose a significant risk of harm to the affected individuals, it shall document its assessment of risk. Such assessment shall include: 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 risk of harm. When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity.
6. **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.
7. **Providing Notice of Breaches.**
- 7.1 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 individuals whose PHI was 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.
- 7.2 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.
- 7.3 The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of what happened, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business associate is doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR §164.404(c).
- 7.4 Business Associate shall notify individuals of Breaches as specified in 45 CFR §164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of Vermont, Business associate shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR §164.406.
8. **Agreements by Third Parties.** Business Associate shall ensure that any agent (including a subcontractor) to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity agrees in a written agreement to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. For example, the written contract must include those restrictions and conditions set forth in Section 14. Business Associate must enter into the written agreement before any use or disclosure of PHI by 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 written agreement to Covered Entity upon request. Business Associate may not make any disclosure of PHI to any agent without the prior written consent of Covered Entity.
9. **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.
10. **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.
11. **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.

- 12. 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 in the time and manner designated by the Secretary. Business Associate shall make the same information available to Covered Entity (without regard to the attorney-client or other applicable legal privileges) 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.
- 13. Termination.**
- 13.1 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 17.7.
- 13.2 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 this Contract without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate this Contract 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 this Contract, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.
- 14. Return/Destruction of PHI.**
- 14.1 Business Associate in connection with the expiration or termination of this Contract 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 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.
- 14.2 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.
- 15. Penalties and Training.** 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. If requested by Covered Entity, Business Associate shall participate in training regarding the use, confidentiality, and security of PHI.
- 16. 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.
- 16.1 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.
- 16.2 Business Associate shall ensure that any agent (including a 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. 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 without the prior written consent of Covered Entity.
- 16.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an agent, including a 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 three (3) 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.
- 16.4 Business Associate shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.
- 17. Miscellaneous.**
- 17.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract, the terms of this Agreement shall govern with respect to its subject matter. Otherwise the terms of the Contract continue in effect.

- 17.2 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.
- 17.3 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.
- 17.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule) in construing the meaning and effect of this Agreement.
- 17.5 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.
- 17.6 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 under this Contract 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.
- 17.7 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 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

(AHS Rev: 8/31/10)

\_\_\_\_\_ **Date:** \_\_\_\_\_

**APPENDIX 4**

**EVENT DEADLINE TABLE**

| <b>Event</b>          | <b>Due Date</b>                 | <b>Due Time (EST)</b>   | <b>Location</b>   |
|-----------------------|---------------------------------|---|---|
| RFP Issued            | January 13, 2011<br>(Thursday)  | RFP – mailed to known potential vendors<br>RFP – posted to State of Vermont Electronic Bulletin Board |   |
| Letter of intent due  | January 20, 2011<br>(Thursday)  | By end of work day (4:30 PM EST)  | <u>Send to Point of Contact</u><br>Vermont Department of Corrections<br>103 South Main Street<br>Waterbury, VT 05671-1001 |
| Questions Deadline    | January 25, 2011<br>(Tuesday)   | 12:00 (noon) PM EST   | Questions received after 1/25/11 will not be accepted   |
| Bidders Conference    | January 27, 2011<br>(Thursday)  | 10:00 AM EST  | DOC Chapel Conference Room, Waterbury, VT 05671   |
|                       |                                 |   |   |
| Proposals Due         | February 10, 2011<br>(Thursday) | 12:00 (noon) PM EST   | <u>Send to Point of Contact (address above) No faxes allowed</u>  |
| Bid Opening           | February 10, 2011<br>(Thursday) | 1:30 PM EST   | DOC Chapel Conference Room, Waterbury, VT 05671 (same room as Bidder's conference)  |
| Request for tour      | February 24, 2011<br>(Thursday) | 4:30 EST  |   |
| Award Announcement    | March 3, 2011 (Thursday)        |   | Notification by phone and follow up letter  |
| Contract Negotiations | March 8, 2011<br>(Tuesday)      |   |   |
| Finalize Contract     | April 21, 2011<br>(Thursday)    |   |   |
| Contractor Start Date | June 1, 2011<br>(Wednesday)     | 12:00 AM  |   |