

CONTRACT AMENDMENT NO. 1
TELEPSYCHIATRY MEDICATION ASSISTED TREATMENT SERVICES
COMMUNITY MEDICAL SERVICES – MONTANA, LLC
CONTRACT NO. COR-SVCS-2023-0482-HSB

This CONTRACT AMENDMENT No. 1 amends the above-referenced Contract between the **State of Montana, Department of Corrections** (State), whose address and phone number are P.O. Box 201301, 5 South Last Chance Gulch, Helena, MT 59620-1301, 406-444-3930 and Community Medical Services – Montana, LLC, (Contractor), whose address and phone number are 2040 Rosebud Dr. Ste. 7, Billings, MT 59101, (602) 248-8886.

This Contract is amended for the following purpose(s) (new language underlined, deleted language interlined):

- 1) In accordance with Section 1, of the above-referenced Contract, entitled Effective Date, Duration, and Renewal, parties mutually agree to extend this Contract for the period January 1, 2024, through December 31, 2024, per the terms, conditions, and prices agreed upon. This is the 1st renewal, 2nd year of the Contract. This Contract, including any renewals, may not exceed a total of seven (7) years.
- 2) In accordance with Section 8, of the above-referenced Contract, entitled Defense, Indemnification/Hold Harmless, parties mutually agree to replace the previously agreed-upon language with the language as shown below:

8. DEFENSE, INDEMNIFICATION / HOLD HARMLESS

Contractor shall protect, defend, indemnify, and save harmless the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, liabilities, demands, causes of action, judgments, and losses, including all costs of defense and reasonable attorney fees, arising in favor of or asserted by Contractor’s employees and agents, its subcontractors, its subcontractor’s employees and agents, or third parties on account of property damage, personal injury, bodily injury, death, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of or in connection with this Contract.

~~Contractor waives all claims, demands, causes of action, and recourse against the State, including claims of contribution or indemnity, arising in favor of Contractor on account of property damage, personal injury, bodily injury, death, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of or in connection with this Contract.~~

- 3) In accordance with Section 21, of the above-referenced Contract, entitled Liaisons and Service of Notices, parties mutually agree to replace the previously agreed-upon language with the language as shown below:

21. LIAISONS AND SERVICE OF NOTICES

21.1 Contract Liaisons. All Project management and coordination on State’s behalf must be through a single point of contact designated as State’s liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor’s work.

All work performed under this Contract must be coordinated between State's liaison and Contractor's liaison.

~~Steffani Turner is State's liaison
5 S. Last Chance Gulch
Helena, MT 59620-1301
(406) 444-1547
Steffani.Turner@mt.gov~~

~~Erica Allen is Contractor's liaison
9449 N. 90th Street
Suite 100
Scottsdale, AZ 85258
(907) 942-3530
Erica.Allen@Cmsgiveshope.com~~

~~Coleman Mack is State's liaison
5 S. Last Chance Gulch
Helena, MT 59620-1301
(406) 444-1547
Coleman.Mack@mt.gov~~

~~Andrea Mankee is Contractor's liaison
8444 N. 90th Street
Suite 100
Scottsdale, AZ 85258
Andrea.Mankee@Cmsgiveshope.com~~

21.2 Contract Manager. State's Contract Manager identified below is State's single point of contact and shall perform all contract management on State's Contractor's behalf. Written notices, requests, complaints, or any other issues regarding this Contract should be directed to State's Contract Manager.

~~Kristi Hernandez is State's Contract Manager
5 S. Last Chance Gulch
Helena, MT 59620-1301
(406) 444-9649
Kristi.hernandez@mt.gov~~

~~Scott Strauss is State's Contract Manager
8444 N. 90th St. Suite 100
Scottsdale, AZ 85258
(602) 248-8886
Scott.Strauss@cmsgiveshope.com~~

Except as modified above, all other terms and conditions of Contract No. **COR-SVCS-2023-0482-HSB**, remain unchanged.

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STATE OF MONTANA
Montana Department of Corrections
5 S. Last Chance Gulch
Helena, MT 59620

COMMUNITY MEDICAL SERVICES -
MONTANA, LLC
2040 Rosebud Dr. Ste. 7
Billings, MT 59101

DocuSigned by:
Jeni Nolin 2/26/2024
30553F4228114E9...
Jeni Nolin, Contracts Manager (Date)
Financial Services Bureau

DocuSigned by:
Scott Strauss 2/26/2024
884E58BD76E8494...
Scott Strauss, VP of Finance (Date)

Approved as to Form:

DocuSigned by:
Ashley Salmon 2/20/2024
B98C1BE4493E492...
Ashley Salmon, Contracts Officer (Date)
Financial Services Bureau

Approved as to Legal Content:

DocuSigned by:
Iryna O'Connor 2/20/2024
2890DE391609463...
Iryna O'Connor, Legal Counsel (Date)
Legal Services Bureau

**TELEPSYCHIATRY MEDICATION ASSISTED TREATMENT SERVICES
COMMUNITY MEDICAL SERVICES – MONTANA, LLC
COR-SVCS-2023-0482-HSB**

THIS CONTRACT is entered into by and between the State of Montana, **Montana Department of Corrections**, (State), whose address and phone number are P.O. Box 201301, 5 S. Last Chance Gulch, Helena, MT 59620-1301 and (406) 444-3930, and **Community Medical Services – Montana, LLC**, (Contractor), whose address and phone number are 2040 Rosebud Dr. Ste. 7, Billings, MT 89101, (602) 248-8886.

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1 Contract Term. The Contract’s initial term is, January 1, 2023, through December 31, 2023, unless terminated earlier as provided in this Contract. In no event is this Contract binding on State unless State’s authorized representative has signed it. The legal counsel signature approving legal content of the Contract and the procurement officer signature approving the form of the Contract do not constitute an authorized signature.

1.2 Contract Renewal. State may renew this Contract under its then-existing terms and conditions in one (1)-year intervals, or any interval that is advantageous to State. This Contract, including any renewals, may not exceed a total of seven (7) years.

2. SERVICES AND/OR SUPPLIES

Contractor shall provide State the following Telepsychiatry Services at all State Facilities:

2.1 Scheduled Outpatient Care. The Contractor and State will agree upon a per facility per week number of Medication Assisted Treatment (MAT) evaluations and clinical hours at contract outset cumulative total of up to forty (40) hours per week of telepsychiatry MAT services, thereafter, any change in hours must be requested in writing and agreed upon thirty (30) days in advance of proposed change. Hours may be changed effective immediately through a process of mutual consent between Contractor and State.

2.1.1 Medication Assistance Treatment for Substance Use Disorders. Contractor will provide MAT for Substance Use Disorders for offenders across all State Facilities. Services provided will be clinically indicated and constitutionally mandated in accordance with established National Commission on Correctional Healthcare (NCCHC) Mental Health Care Standards. The precise schedule and hours provided to State each week are subject to mutual agreement between the parties. Additional hours may be requested as needed by either party.

2.1.2 . Contractor shall conduct MAT psychiatric evaluations as clinically indicated through referral by the State Health Services Bureau. Once a patient-clinician relationship is established with an offender, Contractor will be responsible for management of offender’s MAT medications. State will collaborate with Contractor in monitoring the efficacy and tolerability of MAT medications during appointment interim, and report any issues immediately to Contractor. Individual Contractor clinicians will use best efforts to respond to any communications from State in a timely manner.

2.1.3 . Contractor shall coordinate treatment services with the medical professional and psychiatric professional in cases where offender is being provided with medical and/or psychiatric care.

2.1.4 . As referenced in Montana Department of Corrections (MDOC) Policies 4.5.2 Responsible Health Authority (included as Attachment A), 4.5.25 Pharmaceuticals (included as Attachment B),

and all other applicable policies identified by State, Contractor shall follow applicable State guidelines when providing services to offenders. Contractor shall utilize formulary medications or submit a clinical justification for non-formulary medication approval.

2.2 Administrative Records. Contractor shall create and maintain patient and administrative records, using such forms, checklists, questionnaires, and other practice and administrative tools which are mutually agreeable between the parties. Contractor will order medications in Techcare, the States Electronic Health Records System (EHR). State will maintain time and attendance records of the Contractor.

2.3 State Responsibilities. To assist the Contractor in the delivery of services provided to offenders, State will provide the following:

- Training to Contractor on MDOC Policy and Procedures;
- Storage space for clinical records and access to such records by Contractor in connection with the provision of services

3. WARRANTIES

3.1 Warranty of Services. Contractor represents and warrants that the services will be performed in a professional and workmanlike manner with a degree of care, skill, and competence that is consistent with generally accepted industry standards reasonably expected of similar types of engagements. Contractor warrants that the manner in which it provides the services conform to the Contract requirements, including all descriptions, specifications, and attachments made a part of this Contract. State's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this Contract, at law, or in equity, State may require Contractor to promptly correct, at Contractor's expense, any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished.

4. CONSIDERATION/PAYMENT

4.1 Payment Schedule. In consideration of the Telepsychiatry Services to be provided, State shall pay Contractor according to the following schedule:

4.1.1 Conduent Billing. The Contractor must bill all billable telepsychiatry services to Conduent on an HCFA-1500 claim form. Billing information shall include, but is not limited to, CHIMES ID, the inmate MDOC number, valid diagnosis codes, and Montana Medicaid's current procedure/service codes. Claims must be submitted to:

Conduent Claims Processing Unit
PO Box 8000
Helena, MT 59604

The Contractor acknowledges that they will be compensated by Conduent according to current fee schedules and limits as contained in Montana Medicaid's Manual. Only claims submitted by the Contractor within one (1) year of date of service shall be processed.

All Contractor claims must be submitted within one (1) calendar year of date of service. The State will accept no adjustments, including coding and late-charge adjustments, later than 30 days after payment of the original claim. Payment for claims submitted after one calendar year, or adjustments or late charges submitted later than

30 days after payment of the original claim, which would have resulted in an increased payment if timely submitted, will be forfeited. The State shall have no liability for claims, when said claims are not submitted in accordance with this requirement.

4.2 Withholding of Payment. Subject to provisions of Section 17, Event of Breach – Remedies, State may withhold payments to Contractor if Contractor has breached this Contract. Such withholding may not be greater than, in the aggregate, 5% of the total value of the subject statement of work or applicable contract.

4.3 Payment Terms. Unless otherwise noted in the solicitation document, State has thirty (30) days from receipt to pay invoices, as allowed by § 17-8-242, MCA. Contractor shall provide banking information at the time of Contract execution in order to facilitate State’s electronic funds transfer payments.

4.4 Reference to Contract. The Contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the Contract. If the number is not provided, State is not obligated to timely pay the invoice.

5. NON-EXCLUSIVE CONTRACT

The intent of this Contract is to provide state agencies with an expedited means of procuring supplies and/or services. This Contract is for the convenience of state agencies and is considered by State to be a “Non-exclusive” use contract. Therefore, agencies may obtain this product/service from sources other than the Contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. State does not guarantee any usage.

6. ACCESS AND RETENTION OF RECORDS

6.1 Access to Records. Contractor shall provide State, Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance. State may terminate this Contract under Section 16, Contract Termination, without incurring liability, for Contractor’s refusal to allow access as required by this section. (§ 18-1-118, MCA.) Offender’s protected health information (PHI) shall not be made accessible to Legislative Auditor Division without a HIPAA-compliant release and if applicable a 42 CFR Part-2 compliant release signed by the offender.

6.2 Retention Period. Contractor shall create and retain all records supporting the Telepsychiatry Services for a period of eight (8) years after either the completion date of this Contract or termination of the Contract.

7. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Contractor may not assign, transfer, or subcontract any portion of this Contract without State’s prior written consent. (§ 18-4-141, MCA) Contractor is responsible to State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and State under this Contract.

8. DEFENSE, INDEMNIFICATION / HOLD HARMLESS

Contractor shall protect, defend, indemnify, and save harmless the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims,

liabilities, demands, causes of action, judgments, and losses, including all costs of defense and reasonable attorney fees, arising in favor of or asserted by Contractor's employees and agents, its subcontractors, its subcontractor's employees and agents, or third parties on account of property damage, personal injury, bodily injury, death, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of or in connection with this Contract.

Contractor waives all claims, demands, causes of action, and recourse against the State, including claims of contribution or indemnity, arising in favor of Contractor on account of property damage, personal injury, bodily injury, death, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of or in connection with this Contract.

9. REQUIRED INSURANCE

9.1 General Requirements. Contractor shall maintain for the duration of this Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

9.2 Primary Insurance. Contractor's insurance coverage shall be primary insurance with respect to State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

9.3 Specific Requirements for Commercial General Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of **\$1,000,000** per occurrence and **\$2,000,000** aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

9.4 Specific Requirements for Professional Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of **\$1,000,000** per occurrence and **\$2,000,000** aggregate per year to cover such claims as may be caused by any act, omission, negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors. Note: If "occurrence" coverage is unavailable or cost prohibitive, Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of this Contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three-year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

9.5 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by State. At the request of State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects State, its officers, officials, employees, or volunteers; or (2) at

the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

9.6 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by Department of Corrections, P.O. Box 201301, 5 S. Last Chance Gulch, Helena, MT 59620-1301. *The certificates must name the State of Montana as certificate holder and Contractor shall provide copies of additional insured endorsements required by Contractor's commercial general liability and automobile liability policies.* Contractor must notify State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. State reserves the right to require complete copies of insurance policies at all times.

9.7 Specific Requirements for Cyber/Data Information Security Insurance. The Contractor shall purchase and maintain cyber/information security insurance coverage with combined single limits for each wrongful act of \$2,000,000 per occurrence to cover the unauthorized acquisition of personal information such as social security numbers, credit card numbers, financial account information, or other information that uniquely identifies an individual and may be of a sensitive nature in accordance with § 2-6-1501, MCA through § 2-6-1503, MCA. If the Contractor maintains higher limits than the minimums shown above, the State requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the State. Such insurance must cover, at a minimum, privacy notification costs, credit monitoring, forensics investigations, legal fees/costs, regulatory fines and penalties, and third-party liability settlements or judgements as may be caused by any act, omission, or negligence of the Contractor's officers, agents, representatives, assigns or subcontractors. Note: If occurrence coverage is unavailable or cost-prohibitive, the State will accept 'claims made' coverage provided the following conditions are met: 1) the retroactive date must be shown, and must be before the date of the contract or the beginning of contract work; 2) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work; and 3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.

10. LICENSURE

Contractor agrees to provide the State with copies of appropriate current licenses issued under Title 37 of the Montana Code Annotated for all persons performing services under this Contract, prior to services stated herein being provided.

11. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with §§ 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be sent to Department of Corrections, P.O. Box 201301, 5 S. Last Chance Gulch, Helena, MT 59620-1301.

12. COMPLIANCE WITH LAWS

12.1 Applicable Laws. Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act 42 U.S.C. § 18001 et seq. Contractor will comply with the Prison Rape Elimination Act 34 U.S.C. § 30301 et seq., the Prison Rape Elimination Act final rule 28 CFR Part 115, and MDOC Policy 1.1.17, Prison Rape Elimination Act to include incident reporting. State has a zero-tolerance policy as to incidents of sexual assault/rape or sexual misconduct in its correctional facilities or premises. Contractor is referred to § 45-5-501 MCA. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with § 49-3-207, MCA, and State of Montana Executive Order No. 04-2016, Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

12.2 Affordable Care Act. The Affordable Care Act requires a Contractor, if Contractor is an applicable large employer under the ACA, to provide healthcare coverage for its employees who provide services for the State and work for 30 or more hours per week. This coverage must also cover the eligible employee's dependents under the age of 26. The coverage must (a) meet the minimum essential coverage, minimum value, and affordability requirements of the employer responsibility provisions under Section 4980H of the Code (ACA), and (b) otherwise satisfy the requirements of the Code § 4980H (ACA).

13. DISABILITY ACCOMMODATIONS

State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

14. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are domiciled in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with §§ 35-14-1505, 35-8-1001, and 35-12-1309 MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. §§ 35-8-1001, 35-12-1302, and 35-14-1502, MCA. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

15. INTELLECTUAL PROPERTY/OWNERSHIP

15.1 Title and Ownership Rights. State retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by State (the “Content”), but grants Contractor the right to access and use Content for the purpose of complying with its obligations under this Contract and any applicable statement of work.

15.2 Ownership of Work Product. Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as State may reasonably request, to perfect State’s ownership of any Work Product. Work product is defined as: (i) all deliverables and other materials, products, or modifications that Contractor has developed or prepared for State under this Contract; (ii) any program code, or site-related program code that Contractor has created, developed, or prepared under or primarily in support of the performance of its specific obligations under this Contract; and (iii) manuals, training materials, and documentation. Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as State may reasonably request, to perfect State's ownership of any “Work Product”.

15.3 Copy of Work Product. Contractor shall, at no cost to State, deliver to State, upon State’s request during the term of this Contract or at its expiration or termination, a current copy of all Work Product in the form and on the media in use as of the date of State’s request, or such expiration or termination. All information described in (i) and (ii) is collectively called the “Work Product”.

15.4 Ownership of Contractor Pre-Existing Materials. Contractor retains ownership of all literary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Contractor owns at the time this Contract is executed or otherwise developed or acquired independent of this Contract and employed by Contractor in connection with the services provided to State (the “Contractor Pre-existing Materials”). Contractor Pre-existing Materials are not Work Product. Contractor shall provide full disclosure of any Contractor Pre-existing Materials to State before its use and to prove its ownership. If, however, Contractor fails to disclose to State such Contractor Pre-existing Materials, Contractor shall grant State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-existing Materials embedded in the Work Product to the extent such Contractor Pre-existing Materials are necessary for State to receive the intended benefit under this Contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in Section 15.2, Ownership of Work Product, or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware it provides under this Contract.

16. CONTRACT TERMINATION

16.1 State Termination for Cause with Notice to Cure Requirement. State may terminate this Contract in whole or in part for Contractor’s failure to materially perform any of the services, duties, terms, or conditions contained in this Contract after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than thirty (30) days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

16.2 State Termination for Convenience. State may, by written notice to Contractor, terminate this Contract without cause and without incurring liability to Contractor. State shall give notice of termination to Contractor at least thirty (30) days before the effective date of termination. State shall pay Contractor only that amount, or prorated portion thereof, owed to Contractor up to the date State’s termination takes effect. This is

Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

16.3 Contractor Termination for Cause with Notice to Cure Requirement. Contractor may terminate this Contract for State's failure to perform any of its duties under this Contract after giving State written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than thirty (30) days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

16.4 Reduction of Funding. State must, by law, terminate this Contract if funds are not appropriated or otherwise made available to support State's continuation of performance of this Contract in a subsequent fiscal period. (§ 18-4-313(4), MCA). If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, State shall terminate this Contract as required by law. State shall provide Contractor the date State's termination shall take effect. State shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

16.5 Right of Assurance. If State, in good faith, has reason to believe that Contractor does not intend to, is unable to, or has refused to perform or continue performing all material obligations under this Contract, State may demand in writing that Contractor give a written assurance of intent to perform. Contractor's failure to provide written assurance within the number of days specified in the demand (in no event less than five business days) may, at State's option, be the basis for terminating this Contract and pursuing the rights and remedies available under this Contract or law.

17. EVENT OF BREACH – REMEDIES

17.1 Event of Breach by Contractor. Any one or more of the following Contractor acts or omissions constitute an event of material breach under this Contract:

- Products or services furnished fail to conform to any requirement;
- Failure to submit any report required by this Contract;
- Failure to perform any of the other terms and conditions of this Contract;
- Beginning work under this Contract without prior State approval or breaching Section 22.1, Technical or Contractual Problems, obligations; or
- Voluntary or involuntary bankruptcy or receivership.

17.2 Event of Breach by State. State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

17.3 Actions in Event of Breach. Upon Contractor's material breach, State may:

- Terminate this Contract under Section 16.1, State Termination for Cause with Notice to Cure Requirement and pursue any of its remedies under this Contract, at law, or in equity; or

- Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.

Upon State's material breach, Contractor may:

- Terminate this Contract under Section 16.3, Contractor Termination for Cause with Notice to Cure Requirement, and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law, or in equity.

18. FORCE MAJEURE

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

19. WAIVER OF BREACH

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

20. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without the State's prior written consent. Product or services provided that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

21. LIAISONS AND SERVICE OF NOTICES

21.1 Contract Liaisons. All project management and coordination on State's behalf must be through a single point of contact designated as State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this Contract must be coordinated between State's liaison and Contractor's liaison.

Steffani Turner is State's liaison
5 S. Last Chance Gulch
Helena, MT 59620-1301
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(907) 942-3530
Erica.Allen@Cmsgiveshope.com

21.2 Contract Manager. State's Contract Manager identified below is State's single point of contact and shall perform all contract management on State's behalf. Written notices, requests, complaints, or any other issues regarding this Contract should be directed to State's Contract Manager.

Kristi Hernandez is State's Contract Manager
5 S. Last Chance Gulch
Helena, MT 59620-1301
(406) 444-9649
Kristi.hernandez@mt.gov

Scott Strauss is Contractor's Contract Manager
8444 N. 90th St.
Scottsdale, AZ 85258
(602) 248-8886
Scott.Strauss@cmsgiveshope.com

21.3 Notifications. State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, email, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective on the third business day after mailing.

21.4 Identification/Substitution of Personnel. The personnel identified or described in Contractor's proposal shall perform the services provided for State under this Contract. Contractor agrees that any personnel substituted during the term of this Contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. State reserves the right to approve Contractor personnel assigned to work under this Contract and any changes or substitutions to such personnel. State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve Contractor to perform and be responsible for its obligations under this Contract. State reserves the right to require Contractor personnel replacement. If Contractor personnel become unavailable, Contractor shall provide an equally qualified replacement in time to avoid delays to the work plan.

22. MEETINGS

22.1 Technical or Contractual Problems. Contractor shall meet with State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Contractor and State in the performance of their respective obligations, at no additional cost to the State. State may request the meetings as problems arise and will be coordinated by State. State shall provide Contractor a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the Contract.

22.2 Failure to Notify. If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by State, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

22.3 State's Failure or Delay. For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of State's failure or delay in discharging any State obligation, State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay.

If State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby and provide for any additional charges by Contractor. This is Contractor's sole remedy. If State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

23. TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, if the Contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this Contract or particular work under this Contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. State shall pay Contractor for any resources utilized in performing such transition assistance at the most current Contract rates. If State terminates a project or this Contract for cause, then State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages State may have sustained as a result of Contractor's breach.

24. CHOICE OF LAW AND VENUE

Montana law governs this Contract. The parties agree that any litigation concerning this bid, proposal, or this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees, except as provided in Section 8, Defense, Indemnification/Hold Harmless.

25. TAX EXEMPTION

State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act 42 U.S.C. § 18001 et seq.

26. PERSONAL PROPERTY TAX

All personal property taxes will be paid by Contractor.

27. AUTHORITY

This Contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

28. SEVERABILITY

A declaration by any court or any other binding legal source that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually and materially dependent.

29. PARAGRAPH HEADINGS

The captions and headings set forth in this Contract are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

30. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

30.1 Contract. This Contract consists of thirteen (13) numbered pages, any Attachments as required, and Contractor's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

30.2 Entire Agreement. These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

31. WAIVER

State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

32. EXECUTION

The parties through their authorized agents have executed this Contract on the dates set out below.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

STATE OF MONTANA
Montana Department of Corrections
5 S. Last Chance Gulch
Helena, MT 59601

Community Medical Services – Montana, LLC
2040 Rosebud Dr. Ste. 7
Billings, MT 89101

Cynthia McGillis-Hiner, Bureau Chief (Date)
Health Services Bureau

Scott Strauss, VP of Finance (Date)

Approved as to Form:

Kristi L. Hernandez, Contracts Officer (Date)
Financial Services Bureau

Approved as to Legal Content:

Molenda McCarty, Legal Counsel (Date)
Legal Services Bureau



**ATTACHMENT A
STATE OF MONTANA
DEPARTMENT OF CORRECTIONS
POLICY DIRECTIVE**

Policy No. DOC 4.5.2	Subject: RESPONSIBLE HEALTH AUTHORITY
Chapter 4: FACILITY/PROGRAM SERVICES	Page 1 of 3
Section 5: Clinical Services	Effective Date: Oct. 1, 1997
Department Director Signature: /s/ Brian Gootkin	Revised: 4/19/2021
Medical Director Signature: /s/ Dr. Paul Rees	
Clinical Services Division Administrator Signature: /s/ Connie Winner	

I. POLICY

The Department of Corrections will provide constitutionally mandated, quality health care to offenders in Department and contracted secure care facilities.

II. APPLICABILITY

All secure facilities Department of Corrections owned and contracted, as specified in the contract.

III. DEFINITIONS

Clinical Policy Team – A team which may consist of the Department Clinical Services Division administrator, bureau chief, medical director, dental director, managed care RN, facility or program designated health authority, mental health or psychiatric representative, and facility or program administrator.

Clinical Services – All necessary services including medical, mental health, dental and vision care.

Clinical Services Division (CSD) – The division that oversees all medical, mental health, dental and vision services for all offenders in the custody of the Department in secure and contracted facilities.

Clinical Services Division Administrator – The administrator responsible for overseeing the Clinical Services Division and is the designated Responsible Health Authority for the Department.

Designated Dental Authority – The dental clinician (DMD or DDS) designated by the Clinical Services Division Administrator to oversee dental services.

Designated Health Authority – Regardless of local title, the individual at the facility or program level who is responsible for health services, as designated by the Responsible Health Authority.

Designated Mental Health Authority – Regardless of local title, the individual at the facility or program level who is responsible for mental health services, as designated by the Responsible Mental Health Authority.

Drug Formulary – A written list of prescription and nonprescription medications that are ordinarily available to authorized prescribers, including consultants, working for the facility.

Health Care – The sum of all actions, preventive and therapeutic, taken for the physical and mental

Policy No. DOC 4.5.2	Chapter 4: Facility/Program Services	Page 2 of 3
Subject: RESPONSIBLE HEALTH AUTHORITY		

well-being of a population. Health care includes medical, dental, mental health, nutrition, and other ancillary services, as well as maintaining clean and safe environment conditions.

Health Care Staff – Includes qualified health care professionals and non-licensed health care staff (e.g., medical records staff, health care aides) responsible for offender health care administration and treatment.

Medical Director – The physician(s) designated by the Clinical Services Division administrator to oversee clinical practice decisions requiring medical judgments for offenders under Department jurisdiction.

Qualified Health Care Professionals – Physicians, physician assistants, nurses, nurse practitioners, dentists, mental health professionals and others who by virtue of their education, credentials, and experience are permitted by law to evaluate and care for offenders, including contracted or fee-for-service professionals.

Responsible Health Authority –The Clinical Services Division administrator who oversees all levels of health care and assures quality, accessible and timely clinical services for offenders. The individual is appointed by the Department director.

IV. DEPARTMENT DIRECTIVES

A. Clinical Policy Team

1. The Department clinical policy team will:
 - a. develop, revise, and monitor the implementation of Department clinical services policies, procedures, protocols, and managed care policies;
 - b. review and approve each facility or program's clinical service procedures, and protocols;
 - c. oversee the drug formulary;
 - d. make medical, dental, vision, and mental health administrative judgments based on policies and protocols;
 - e. provide policy guidance and oversight to offender health care professionals;
 - f. monitor the level and quality of facility and program clinical services to ensure compliance with all applicable standards;
 - g. oversee the Department's health care-related, continuous quality improvement program;
 - h. provide professional direction and leadership; and
 - i. guide the Department's compliance with adult and youth health-related legal standards.

B. Health Authority Requirements

1. Written job descriptions or contracts will govern the responsible health authority and medical director responsibilities.
2. Written job descriptions or contracts will govern the medical and mental health bureau chiefs' responsibilities.

Policy No. DOC 4.5.2	Chapter 4: Facility/Program Services	Page 3 of 3
Subject: RESPONSIBLE HEALTH AUTHORITY		

3. The responsible health authority, medical and mental health bureau chiefs, and medical director will coordinate with each other and health care staff to ensure adequate, quality, accessible, and timely clinical services for offenders.
4. The medical and mental health bureau chiefs will:
 - a. serve as a liaison between the CSD and the designated health and mental health authorities at facilities to ensure health care services are rendered in accordance with Department policy and national standards;
 - b. evaluate facility health care needs;
 - c. regularly report facility-specific health care information to the CSD administrator; and
 - d. participate in strategic planning and program development as requested by the CSD administrator.
5. The medical director will:
 - a. render the final medical judgments for offenders under Department jurisdiction; and
 - b. review community health care provider treatment recommendations.
6. The designated health and mental health authorities on-site at the facility will:
 - a. assume the responsibility to direct the medical or mental health care of inmates in collaboration with the medical director and/or other qualified health care professionals;
 - b. function within the guidelines of their respective scopes of practice; and
 - c. not place restrictions on a physician's routine practice of medicine.
7. Department qualified health care professionals will:
 - a. function within the guidelines of their respective scopes of practice; and
 - b. will not place any restrictions on a physician's routine practice of medicine.

V. CLOSING

Questions concerning this policy should be directed to the Clinical Services Division administrator or designee.

VI. REFERENCES

- A. *ACA Standards for Juvenile Correctional Facilities, 4th edition*
- B. *P-A-02; National Commission on Correctional Health Care Standards for Health Services in Prisons, 2018*
- C. *MH-A-01, MH-A-02; National Commission on Correctional Health Care Standards for Mental Health Services in Correctional Facilities, 2015*
- D. *Y-A-02; National Commission on Correctional Health Care Standards for Health Services in Juvenile Detention and Confinement Facilities, 2015*

VII. ATTACHMENTS

None



**ATTACHMENT B
STATE OF MONTANA
DEPARTMENT OF CORRECTIONS
POLICY DIRECTIVE**

Policy No. DOC 4.5.25	Subject: PHARMACEUTICAL OPERATIONS
Chapter 4: FACILITY/PROGRAM SERVICES	Page 1 of 2
Section 5: Clinical Services	Effective Date: July 1, 1998
Department Director Signature: /s/ Brian Gootkin	Revised: 4/19/2021
Medical Director Signature: /s/ Dr. Paul Rees	
Clinical Services Division Administrator Signature: Connie Winner	

I. POLICY

The Department of Corrections facility health care staff will ensure that all medications are prescribed, distributed, and administered, procured, and disposed of in accordance with state and federal laws and regulations.

II. APPLICABILITY

All secure care facilities Department owned and contracted, as specified in contract.

III. DEFINITIONS

Accounting – The act of recording, summarizing, analyzing, verifying, and reporting medication usage.

Administer – The act in which a single dose of an identified drug is given to an offender.

Clinical Policy Team – A team which may consist of the Department Clinical Services Division administrator, medical director, dental director, managed care RN, facility or program designated health authority, mental health or psychiatric representative, and facility or program administrator.

DEA Controlled Substances – Medications that are under the jurisdiction of the federal Controlled Substances Act (1971).

Dispense – The placing of one or more doses of a prescribed medication into containers that are correctly labeled to indicate the name of the offender, the contents of the container, and all other vital information.

Dispose – The destruction of medication on its expiration date or when retention is no longer necessary or suitable (e.g., upon discharge of the offender from the facility) or the provision of medication to the offender upon discharge (in accordance with the continuity of care principle).

Distribution – The system for delivering, storing, and accounting for medications from the source of supply to the nursing station or point where they are administered to the offender.

Drug Formulary – A list available to authorized prescribers of medications available without pre-approval in health care programs. Medications not listed on the formulary are considered non-formulary and require pre-approval from the Clinical Services Division before use in health care programs.

Health Care Providers – Licensed health care providers (e.g., physicians, nurses, psychiatrists, dentists, and mental health practitioners), including contracted or fee-for-service providers, responsible for offender health care and treatment.

Pharmaceutical – Any drug, chemical, vaccine, hormone or medication that may only be dispensed by a licensed or certified provider to render treatment, evaluation, or health care.

Procure – The act of ordering medications for the facility.

IV. DEPARTMENT DIRECTIVES

A. Pharmaceutical Distribution

1. Health care providers will procure, dispense, and administer pharmaceuticals in accordance with all state and federal regulations.
2. An unlicensed person may observe an offender self-administer medications, give verbal prompts or reminders, or hand a prefilled labeled medication holder to the offender.

B. Pharmaceutical Procedures

1. Each facility will develop procedures that comply with all state and federal regulations and that address:
 - a. prescribing;
 - b. procurement and distribution;
 - c. dispensing and administration in a timely and safe manner;
 - d. storage and disposal;
 - e. accountability and maximum security of Drug Enforcement Agency (DEA) controlled substances;
 - f. procedures for offender self-administration; and
 - g. adequate supplies of antidotes and emergency medications.
2. The facility maintains records as necessary to ensure adequate control and accountability for all medications, except those that may be purchased over the counter.
3. Drug storage and medication areas are devoid of outdated, discontinued, or recalled medications, except in a designated area for disposal.
4. All medications are stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security.
5. Antiseptics, other medications for external use, and disinfectants are stored separately from internal and injectable medications. Medications requiring special storage (e.g., refrigeration) for stability are so stored.
6. An adequate and proper supply of antidotes and other emergency medications (e.g., Naloxone, Epinephrine) and related information are readily available to staff.
7. The poison control telephone number is posted in areas where overdoses or toxicologic emergencies are likely.

Policy No. DOC 4.5.25	Chapter 4: Facility/Program Services	Page 3 of 3
Subject: PHARMACEUTICALS		

8. Consulting pharmacists will be utilized for locations with no staff pharmacists to provide consultation and documented inspections on a regular basis, but no less than quarterly. Off-site Satellite locations are included in inspection schedules.

C. Formulary Management

1. The Department Clinical Services Division administrator and medical director will:
 - a. develop the drug formulary with the assistance of the consulting pharmacist and the clinical policy team; and
 - b. define the approval process for using non-formulary medication.

V. CLOSING

Questions concerning this policy should be directed to the Clinical Services Division administrator.

VI. REFERENCES

- A. *P-D-01, P-D-02; National Commission on Correctional Health Care Standards for Health Services in Prisons, 2018*
- B. *Y-D-01; National Commission on Correctional Health Care Standards for Health Services in Juvenile Detention and Confinement Facilities, 2015*
- C. *MH-D-01; National Commission on Correctional Health Care Standards for Mental Health Services in Correctional Facilities, 2015*
- D. *Statutes and Rules Relating to Physicians, Nursing, Nurse Practitioners and Physician Assistants as issued by the Montana Department of Professional Licensure*
- E. *37.8.202, 41.5.1802 MCA*
- F. *20.9.623, 24.159.1604, 24.174.1111 Administrative Rules of Montana*

VII. ATTACHMENTS

None

ATTACHMENT C

Federal Terms and Conditions (Non-Construction)

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the contractor/vendor agrees to acceptance of the following Federal Terms and Conditions along with all other provisions that are specific to this solicitation or contract as applicable.

1. Nondiscrimination

Contractor agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the Contractor's performance under this contract, on the ground of race, religion, color, national origin, sex or handicap. Accordingly and to the extent applicable, the Contractor agrees to comply with the following national policies prohibiting discrimination:

a. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.) as implemented by DoD regulations at 32 CFR part 195.

b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 {3 CFR, 1964-1965 Comp. pg. 339}, as implemented by Department of Labor regulations at 41 CFR part 60.

c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DoD regulations at 32 CFR part 196.

d. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.

e. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

2. Lobbying

Contractor agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the State agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

3. Drug-Free Work Place

Contractor agrees to comply with the requirements regarding drug-free workplace requirements in Subpart B of 32 CFR part 26, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

4. Environmental Protection

(a) Contractor agrees that its performance under this contract shall comply with:

- (1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
- (2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;
- (3) The Resources Conservation and Recovery Act (RCRA);
- (4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
- (5) The National Environmental Policy Act (NEPA);
- (6) The Solid Waste Disposal Act (SWDA);
- (7) The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;
- (8) To identify any impact this contract may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.

(b) In accordance with the EPA rules, the parties further agree that the Contractor/Vendor shall also identify to the state any impact this contract may have on:

- (1) The quality of the human environment and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.
- (2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.
- (3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.
- (4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.
- (5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).
- (6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).

5. Use of United States Flag Vessels

Contractor agrees that travel under this contract shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

The Contractor/Vendor agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. Chapter 553), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

6. Debarment and Suspension.

Contractor is subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

Contractor agrees to comply with the DOD implementation of 2 CFR part 180 (at 2 CFR 1125) by checking the Excluded Parties List System (EPLS) at the current OMB website to verify (sub)contractor eligibility to receive contracts and subcontracts resulting from this Agreement. The Contractor shall not solicit offers from, nor award contracts to contractors listed in EPLS. This verification shall be documented in the Contractors contract files, and shall be subject to audit by Federal and State audit agencies

7. Buy American Act.

Contractor agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10a et seq). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community (EEC) on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

8. Uniform Relocation Assistance and real Property Acquisition Polices

Contractor agrees that it will comply with CFR 49 part 24, which implements the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

9. Copeland "Anti-Kickback" Act

Contractor agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this contract, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

10. Contract Work Hours and Safety Standards Act

Contractor agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1.5 times the basic rate of pay.

11. Rights to Inventions Made Under a Contract or Agreement.

Any discovery or invention that arises during the course of the contract shall be reported to the non-Federal entity. Contractor/Vendor must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

12. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended

Any Contract or subcontract in excess of \$150,000 must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the State who in turn will report to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

13. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contractors that bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

14. System For Award Management and Data Universal Numbering Requirements

Contractor agrees to comply with the System for Award Management and Data Universal Numbering as indicated below:

Contractor must provide DUNS number to the state. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun & Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the internet (currently at <http://fedgov.dnb.com/webform>)

15. Procurement of recovered materials.

Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

16. 2 C.F.R. 200.326, Appendix II, Required Contract Clauses

2 C.F.R. 200.326, Appendix II, Required Contract Clauses are incorporated by reference as if set forth in full text and are made part of this agreement as applicable. Contractor shall comply with all applicable contract clauses and provide the same clauses in any subcontracts or purchase orders issued in support of this agreement with the state.

17. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

The Contractor agrees it will not provide or use covered telecommunications equipment or services in the performance of this contract in compliance with 2 CFR 200.216. Covered telecommunications equipment or services has the meaning provided in Public Law 115-232, section 889.