

**STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
CONTRACTUAL AGREEMENT
DPSCS Q0016026**

BON SECOURS HOSPITAL BALTIMORE, INC.

THIS CONTRACT (the "Contract") is made this ____ day of April, 2017, by and between Bon Secours Hospital Baltimore, Inc., ("BSH" or "Contractor") and the STATE OF MARYLAND, acting through the Department of Public Safety and Correctional Services ("Department" or "DPSCS").

In consideration of the promises and the covenants herein contained, the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 "340B program" refers to the federal drug discount program established under Section 340B of the Public Health Service Act, codified at 42 USC § 256b.
- 1.2 "COMAR" means Code of Maryland Regulations.
- 1.3 "Contract Monitor" means the Department employee identified in Section 31 of this contract.
- 1.4 "Department-Approved 340B Contract Pharmacy" means a pharmacy that has been authorized by the Contractor, and approved by the Department, to serve as BSH's 340B program contract pharmacy for purposes of ordering and dispensing drugs purchased through the 340B program for the Inmates treated by medical providers employed by BSH.
- 1.5 "DPSCS Medical Director or Department Medical Director" means the State physician who is primarily responsible for providing medical guidance to the Contractor, Medical Contractor, other health care vendors, and the Department.
- 1.6 "Drug Purchasing Cost" means the amount invoiced by and paid to Contractor's drug wholesaler for drugs provided to Inmates in a given month under this Agreement, which cost shall not exceed the price that can be charged by a manufacturer or wholesaler to covered entities participating in the 340B program.
- 1.7 "Inmate" means an individual who is actively or constructively detained or confined in a DPSCS correctional facility.
- 1.8 "Medical Contractor" means the Department's contracted inmate medical health care and utilization services provider.
- 1.9 "Procurement Officer" means the Department employee identified in Section 32 of the Contract.
- 1.10 "Reference Cost" means the aggregate wholesale acquisition cost, as reported by Contractor's drug wholesaler, of the same drugs included in the Drug Purchasing Cost for a given month.
- 1.11 "State" means the State of Maryland.

1.12 “Telemedicine” means the provision of health care services via telecommunication technologies.

2. Scope of Contract

2.1 The Contractor shall provide the Infectious Disease and Pharmacy Services described in Exhibit B to Inmates referred by the Department or its Medical Contractor. In addition, the Contractor shall authorize a pharmacy vendor approved by the Department to serve as BSH’s 340B program contract pharmacy. The Infectious Disease and Pharmacy Services shall be provided in accordance with this Contract and the following Exhibits, which are attached and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision.

Exhibit A State Contract Affidavit, executed by the Contractor and dated

Exhibit B Contractor’s Scope of Services for Infectious Disease Services and Pharmacy Services

Exhibit B-1 Excluded Drug List

Exhibit C Living Wage Affidavit

2.2 All medical services described in this Contract shall be provided in or, in the case of Telemedicine, from Contractor’s hospital located at 2000 W. Baltimore Street, Baltimore, Maryland 21223.

2.3 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under Section 12. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

2.4 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Contract as provided in Section 2.3 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

2.5 If any term contained in this contract is held or finally determined to be invalid, illegal or unenforceable in any respect, in whole or in part, such term shall be severed from this contract and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced or disturbed thereby.

3. Period of Performance

- 3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works. The Contractor shall provide services under this Contract as of the Go-Live Date contained in the written Notice to Proceed that will be issued by the Procurement Officer. (The Department anticipates the Go-Live Date will be approximately 60 days from the date contained in the Notice to Proceed.) From this Go-Live Date, the Contract shall be for a period of two (2) years.
- 3.2 Audit, confidentiality, document retention, indemnification obligations and any other provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive expiration or termination of the Contract and continue in full force and effect.

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract. Unless properly modified (see above Section 2.3), payment to the Contractor pursuant to this Contract shall not exceed \$20,565,537 in the aggregate. Contractor shall notify the Contract Monitor, in writing, at least sixty (60) days before payments reach the above specified amount. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (a) promptly consult with the State and work in good faith to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete State-defined critical work in progress prior to the date the stated amount will be reached; and (b) when applicable secure databases, systems, platforms, and/or applications on which the Contractor is working so that no damage or vulnerabilities to any of the same will exist due to the existence of any such unfinished work.
- 4.2 The Department shall:
- (a) Pay Contractor on the first day of each month a fixed monthly Infectious Disease Services fee of Thirty Eight Thousand Five Hundred Twenty Dollars and Twenty-Five Cents (\$38,520.25) which shall cover all administrative costs of performing the Infectious Disease Services described in Exhibit B, including the infectious disease physician, LPN, management associate, general administrative expenses, overhead, and profit. On the anniversary of the Go-Live Date, the monthly Infectious Disease Services fee shall increase by the percentage increase in the "Consumer Price Index, U.S. All Urban Consumers: Medical Care" published by the United States Department of Labor, Bureau of Labor Statistics. The monthly Infectious Disease Services fee shall commence with the Go-Live Date.
- (b) Pay Contractor each month an Administrative Fee equal to Forty Five Percent (45%) of the difference between Contractor's Drug Purchasing Cost for Inmates in the calendar month one month prior (*e.g.*, March for February) and the Reference Cost for the same period of time. The Administrative Fee covers all administrative costs associated with acquiring the pharmaceuticals, compliance with 340B program requirements regarding maintenance of records and auditing, general administrative expenses, and overhead. The Department shall be responsible for paying the Department-Approved 340B Contract Pharmacy directly for the cost of pharmacy services

associated with drugs purchased under this agreement, including the cost of packaging and dispensing the drugs throughout the Department's facilities.

(c) Pay the Contractor each month for the Drug Purchasing Cost at the 340B pricing for all drugs purchased in the calendar month one month prior (*e.g.* March for February.)

(d) Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor.

(e) The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if: (1) the Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the Amount on which the interest accrued; and (2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

(f) The State is not liable for interest: (1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or (2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable.

4.3 Invoicing Statements:

(a) The Contractor shall submit an Invoicing Statement by the tenth (10th) day of each month describing the drugs that were dispensed by Contractor's 340B program contract pharmacy to Inmates on Contractor's behalf in the prior month. The Invoicing Statement shall contain, to the extent available, all information requested in (c), and shall be submitted electronically using an Excel spreadsheet or other format acceptable to the DPSCS Contract Monitor.

(b) The Contractor shall ensure that Invoicing Statements include the Drug Purchasing Cost and the Reference Cost. In addition to the Drug Purchasing Cost and Reference Cost, the Contractor shall prepare an Excel workbook file that includes a monthly report that lists all drug types provided to the Department, by the National Drug Code ("NDC") code of each, in that particular month and the quantities of each drug type provided.

(c) The Invoicing Statement shall also include at a minimum, for each prescription, the following data:

- (1). Inmate's Name
- (2). Inmate's ID Number
- (3). Prescriber
- (4). Generic Code
- (5). Other code if non-formulary
- (6). Dosage Form
- (7). Package Size
- (8). NDC Code
- (9). Quantity
- (10). Date of order and date of fill
- (11). Date dispensed
- (12). Whether initial fill or refill

(13). Prescription Number

(d) All Invoicing Statements shall also contain an invoice number, the Contractor's Federal Tax ID number, the Contract number and the date. All invoicing statements must be signed by appropriate staff of the Contractor and submitted to the Department's Contract Monitor.

4.4 Payment for Specialty Services, Hospital-Based Inpatient and Outpatient Care Not Covered Under this Contract: The Department's Medical Contractor is designated as the payer of all inpatient or outpatient offsite secondary care, including hospital based care and on-site or off-site specialty services. The scope of this contract is limited to treatment for HIV and Hepatitis C by the infectious disease medical providers employed by BSH under the terms of this Contract, and those infectious disease consultation services specifically directed by the Department's Medical Director. For all other services, the Contractor shall bill the Department's Medical Contractor directly consistent with the Department's and the Medical Contractor's contractual agreement.

4.5 Nothing in this Contract shall preclude Contractor from billing the Medical Contractor for the facility fee associated with any qualifying BSH encounter. Such fees shall not be considered payment to the Contractor pursuant to this Contract for purposes of this Contract. No costs covered by the Contract's Infectious Disease fee or Administrative fee are included in the facility fee.

5. Rights to Records

5.1 Nothing in this Section 5 shall be interpreted to apply to medical or pharmacy records, which instead shall be handled in accordance with Section 8.

5.2 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data created by the Contractor solely for purposes of this Contract shall be the sole property of the State (except for pre-existing intellectual property of Contractor used in any deliverables, which shall continue to be owned by Contractor with a license to the State) and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract. Notwithstanding the foregoing, and subject to the provisions of Section 8, all medical or pharmacy records generated by Contractor relating to the Infectious Disease and Pharmacy Services provided under this Contract and any pre-existing intellectual property of Contractor used in any deliverables hereunder shall be the sole property of Contractor. Further, the State has no rights with respect to any third-party software licensed or purchased by Contractor to assist it with the management or administration of the services described in this Contract.

5.3 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

- 5.4 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.5 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.6 This Section 5 shall survive expiration or termination of the Contract.

6. Exclusive Use

The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software created by Contractor pursuant to this Agreement, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State. Notwithstanding the foregoing:

- 6.1 The handling of protected health information (PHI) shall be in accordance with Section 8.
- 6.2 Subject to all State and federal laws governing confidentiality of personal identifying information, including confidentiality of medical records, Contractor may publish case studies or articles of an academic nature based on its experience providing the services described in this Agreement, and Contractor shall be the copyright owner of such publications.

7. Patents, Copyrights, and Intellectual Property

- 7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.
- 7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs, and attorneys' fees that a court finally awards, provided the State: (a) promptly notifies the Contractor in writing of the claim; and (b) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.
- 7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for the State the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

8. Confidentiality

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws, including without limitation, the Health Insurance Portability Act and Accountability Act (HIPAA) and the HITECH ACT (42 U.S.C. §§ 1320d et seq., and implementing regulations at 45 C.F.R. Parts 160 and 164), and the Maryland Confidentiality of Medical Records Act (MCMRA; Md. Code Ann. Health-General §§ 4-301 et seq), all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.
- 8.2 The Contractor acknowledges that, in the course of performance hereunder, the Contractor may receive personally identifiable information that may be restricted from disclosure under the HIPAA and/or the Family Educational Rights and Privacy Act (FERPA). Notwithstanding any other provision of this Contract, the Contractor will be responsible for all damages, fines and corrective action arising from disclosure of such information caused by such breach of its data security or confidentiality provisions hereunder.
- 8.3 **Health and Financial Information:**
- The Contractor agrees to keep information obtained in the course of this contract confidential in compliance with any applicable State and federal confidentiality requirements regarding collection, maintenance, and use of health and financial information. This includes, where appropriate, HIPAA and MCMRA. This obligation includes providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the Contract. This obligation further includes restricting use and disclosure of the records, generally providing safeguards against misuse of information, keeping a record of any disclosures of information, providing all necessary procedural and legal protection for any disclosures of information, promptly responding to any requests by the Department for information about its privacy practices in general or with respect to a particular individual, modifying information as may be required by good professional practice as authorized by law, and otherwise providing good information management practices regarding all health and financial information.
- 8.4 The DPSCS Medical Contractor is the designated custodian for the State of all electronic and hardcopy Inmate patient health records, including records received from external treatment facilities. The Contractor shall transmit copies of all Inmate patient health records to the Medical Contractor as directed by the DPSCS Medical Director or designee. The Contractor owns and maintains the records it generates, as described in Section 5.2.
- 8.5 This Section 8 shall survive expiration or termination of this Contract.

9. Loss of Data

In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and/or applications with which the Contractor is working hereunder.

10. Indemnification

- 10.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.
- 10.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the negligence of the State or the State's employees.
- 10.3 The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.4 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.5 In addition to and in compliance with its obligation under Section 39 of this Contract, the Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.
- 10.6 This Section 10 shall survive expiration or termination of this Contract.

11. Non-Hiring of Employees

- 11.1 No official or employee of the State, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

12. Disputes

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. The Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

13. Maryland Law

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 The Md. Code Ann., Commercial Law Article, Title 22, Maryland Uniform Computer Information Transactions Act, does not apply to this Contract or to any purchase order or Notice to Proceed issued under this Contract.
- 13.3 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, sexual orientation, genetic information, gender identity, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

15. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

16. Non-Availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the

reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

17. Termination and Modification

- 17.1 Termination for Default. If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.
- 17.2 Termination for Convenience. The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).
- 17.3 Due to Change in Law. The Pharmacy Services contemplated in this Contract are provided in accordance with the federal, state, and local statutes, regulations, guidances, and other applicable instruments in effect ("Applicable Law") as of the date on which the Contract is executed, including explicitly 340B program requirements and guidance established by the United States Department of Health and Human Services, Health Resources and Services Administration, through its Office of Pharmacy Affairs. In the event of a change in Applicable Law that, in the written opinion of legal counsel, makes it probable that the continued performance under this Contract could subject a party to penalties, sanctions, or other adverse government or administrative legal action the parties will revisit the terms of the Contract to determine whether the Contract can be performed, must be modified, or must be terminated. In the event that the Contractor's Administrative Fee is less than \$750,000 per year, the parties will revisit the terms of the Contract to determine whether the Contract can be performed, must be modified, or must be terminated. The State's termination rights under Section 17.2 (Termination for Convenience) of the Contract are not affected by this section.
- 17.4 Due to Loss of 340B Program Eligibility. The Pharmacy Services contemplated in this Contract are dependent upon Contractor's continued eligibility to participate in the 340B program. In the event that Contractor loses its eligibility to participate in the 340B program for any reason whatsoever, the Contract automatically will be terminated as of the date of lost eligibility. The State's termination rights under Section 17.2 (Termination for Convenience) of the Contract are not affected by this section.

18. Delays and Extensions of Time

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays, interruptions, interferences, or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

19. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

20. Pre-Existing Regulations

In accordance with the provisions of Md. Code Ann., State Finance and Procurement Article, § 11-206, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

21. Financial Disclosure

The Contractor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, § 13-221, which requires that every business that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

22. Political Contribution Disclosure

The Contractor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall, file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31.

Additional information is available on the State Board of Elections website: http://www.elections.state.md.us/campaign_finance/index.html.

23. Documents Retention and Inspection Clause

The Contractor and subcontractors shall retain and maintain all records and documents relating to this contract for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. This Section 23 shall survive expiration or termination of the Contract.

24. Compliance with Laws

The Contractor hereby represents and warrants that:

- 24.1 It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- 24.2 It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- 24.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- 24.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

25. Cost and Price Certification

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of submission..

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date it was provided, was inaccurate, incomplete, or not current.

26. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, provided, however, that a contractor may assign monies receivable under a contract after due notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

27. Liability

- 27.1 For breach of this Contract, negligence, misrepresentation, or any other contract or tort claim, Contractor shall be liable as follows:
- a. For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;
 - b. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
 - c. For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form. Contractor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

28. Commercial Nondiscrimination

- 28.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 28.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.
- 28.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, Contractor agrees to provide within sixty (60) days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in

contract termination, disqualification by the State from participating in State contracts, and other sanctions.

29. Insurance Requirements

29.1 The Contractor shall maintain general liability, property and casualty insurance with minimum limits, as outlined below, and sufficient to cover losses resulting from or arising out of Contractor action or inaction in the performance of the Contract by the Contractor, its agents, employees or Subcontractors.

29.2 Worker's Compensation – The Contractor shall maintain such insurance as necessary and/or as required under Worker's Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employee's Liability Act.

29.3 Malpractice Insurance Aggregate Limit – The Contractor shall purchase and maintain Malpractice Insurance coverage in the minimum amount of \$7,000,000.

29.4 Commercial General Liability – The Contractor shall purchase and maintain at least the following insurance protection for liability claims arising as a result of the Contractor's operations under this Contract:

- \$7,000,000: General Aggregate Limit
- \$2,000,000: Products/completed operations aggregate limit
- \$1,000,000: Each Occurrence Limit
- \$1,000,000: Personal and Advertising Injury Limits
- \$50,000: Fire Damage Limit
- \$5,000: Medical Expense

29.5 Within ten (10) business days of Contract Award, the Contractor shall: (i) provide the State with current certificates of insurance that identify the State as an additional insured, and (ii) shall maintain and report such insurance annually to the Procurement Officer.

29.6 The certificate of insurance shall acknowledge a requirement for the insurer to provide 45 days' notice to the Department in the event the Contractor's insurance will lapse due to non-payment of premiums, or will not be renewed by the insurer. In this event the Contractor must provide the Department Contract Monitor with evidence of replacement insurance within 30 days. At no time may the Contractor provide services under this contract without appropriate insurance coverage.

30. Security

30.1 Any person who is an employee or agent of the Contractor or subcontractor and who enters the Contractor's secure locked wards is subject to search of his or her person and/or property, and in addition may be fingerprinted (for the purpose of a criminal history background check), photographed and required to wear an identification card issued by the Department. Further, the Contractor, its employees and agents and subcontractor's employees and agents shall not violate any provisions of Title 9, Subtitle 4 of the Criminal Law Article of the Annotated Code of Maryland and such other security regulations, directives and policies of the Department about which they may be informed from time to time. The failure of any of the Contractor's or subcontractor's employees or agents to comply with any provision of this Section 30 of this contract is sufficient grounds for this Department to immediately terminate this contract for default.

31. Contract Monitor and Procurement Officer

The work to be accomplished under this Contract shall be performed under the direction of the Contract Monitor. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination. The Contract Monitor identified for this contract is Joseph Ezeh.

32. Notices

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the State: Anna Lansaw
Procurement Officer
Department of Public Safety and Correctional Services
300 E. Joppa Road, Suite 1000
Baltimore, MD 21215
Phone: 410-339-5013
Fax: 410-339-4240
Email: annaa.lansaw@maryland.gov

If to the Contractor: Bon Secours Hospital Baltimore, Inc.
2000 West Baltimore Street
Baltimore, MD 21223
Attention: Chief Financial Officer

With a cc to: Bon Secours Health System, Inc.
1505 Marriottsville Road
Marriottsville, MD21104
Attention: General Counsel

33. Staffing Requirements

The Contractor and its subcontractors shall employ only those persons who maintain the proper training, licenses, certificates, cooperative agreements and registrations required by the various Health Occupations Boards relating to the performance discipline contained in the Code of Maryland Regulations and the Health Occupations Article of the Maryland Annotated Code to provide these services in Maryland.

34. Living Wage

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the Department may withhold payment of any invoice or retainage. The Department may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

35. Information Technology

- 35.1 "Sensitive Data" means information that is protected against unwarranted disclosure, to include Personally Identifiable Information (PII), Protected Health Information (PHI) or other private/confidential data, as specifically determined by the State. Sensitive Data includes information about an individual that (1) can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information; (3) falls within the definition of "personal information" under Md. Code Ann., State Govt. § 14-3501(d); or (4) falls within the definition of "personal information" under Md. Code Ann., St. Fin. & Proc. § 10-1301(c).
- 35.2 "Relevant subcontractor" includes any subcontractor that assists the Contractor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subcontractors that provide secondary services that are not pertinent to assisting the Contractor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system.
- 35.3 The Contractor, including any relevant subcontractor(s), shall implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry standards for information security such as those listed below, and shall ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of these Specifications and resulting Contract.
- 35.4 The Contractor, including any and all subcontractor(s), agrees to abide by all applicable federal, State and local laws concerning information security and comply with current State of Maryland Department of Information Technology Security Policy: <http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>. The State IT Security Policy may be revised from time to time. The Contractor and all subcontractors shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online at: www.doit.maryland.gov – keyword: Security Policy.

35.5 Information Security Requirements

To ensure appropriate data protection safeguards are in place, the Contractor and any relevant subcontractor(s) shall at a minimum implement and maintain the following information technology controls at all times throughout the life of the Contract. The Contractor and any relevant subcontractor(s) may augment this list with additional information technology controls.

- (a) Establish separate production, test, and training environments for systems supporting the services provided under this Contract and ensure that production data is not replicated in the test and/or training environment unless it has been previously anonymized or otherwise modified to protect the confidentiality of Sensitive Data elements.
- (b) Apply hardware and software hardening procedures as recommended by the manufacturer to reduce the Contractor/subcontractor's systems' surface of vulnerability. The purpose of system hardening procedures is to eliminate as many security risks as possible. These procedures may include but are not limited to removal of unnecessary software, disabling or removing of unnecessary services, the removal of unnecessary usernames or logins, and the deactivation of unneeded features in the Contractor/subcontractor's system configuration files.

- (c) Establish policies and procedures to implement and maintain mechanisms for regular internal vulnerability testing of operating system, application, and network devices supporting the services provided under this Contract. Such testing is intended to identify outdated software versions; missing software patches; device or software misconfigurations; and to validate compliance with or deviations from the Contractor's and/or subcontractor's security policy. The Contractor and any relevant subcontractor(s) shall evaluate all identified vulnerabilities for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.
- (d) Where website hosting or Internet access is the service provided or part of the service provided, the Contractor and any relevant subcontractor(s) shall conduct regular external vulnerability testing. External vulnerability testing is an assessment designed to examine the Contractor's and subcontractor's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. The Contractor and any relevant subcontractor(s) shall evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.
- (e) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under this Contract; that the anti-virus and anti-malware software is automatically updated; and that the software is configured to actively scan and detect threats to the system for remediation.
- (f) Enforce strong user authentication and password control measures over the Contractor/subcontractor's systems supporting the services provided under this Contract to minimize the opportunity for unauthorized system access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current State of Maryland Department of Information Technology's Information Security Policy (<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>), including specific requirements for password length, complexity, history, and account lockout.
- (g) Ensure State data under this service is not processed, transferred, or stored outside of the United States.
- (h) Ensure that State data is not comingled with the Contractor's and subcontractor's other clients' data through the proper application of data compartmentalization security measures. This includes but is not limited to classifying data elements and controlling access to those elements based on the classification and the user's access or security level.
- (i) Apply data encryption to protect State data, especially Sensitive Data, from improper disclosure or alteration. Data encryption should be applied to State data in transit over networks and, where possible, State data at rest within the system, as well as to State data

when archived for backup purposes. Encryption algorithms which are utilized for this purpose must comply with current Federal Information Processing Standards (FIPS), "Security Requirements for Cryptographic Modules", FIPS PUB 140-2.

<http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>

<http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm>

- (j) Enable appropriate logging parameters on systems supporting services provided under this Contract to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers as well as information security standards including the current State of Maryland Department of Information Security Policy: <http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>
- (k) Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and perform remediation, if required. The Department shall have the right to inspect these policies and procedures and the Contractor or subcontractor's performance to confirm the effectiveness of these measures for the services being provided under this Contract.
- (l) Ensure system and network environments are separated by properly configured and updated firewalls to preserve the protection and isolation of Sensitive Data from unauthorized access as well as the separation of production and non-production environments.
- (m) Restrict network connections between trusted and untrusted networks by physically and/or logically isolating systems supporting the services being provided under the Contract from unsolicited and unauthenticated network traffic.
- (n) Review at regular intervals the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed, including the rationale or compensating controls implemented for those protocols considered insecure but necessary.
- (o) Ensure that the Contractor's and any subcontractor's personnel shall not connect any of their own equipment to a State LAN/WAN without prior written approval by the State. The Contractor/subcontractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor/subcontractor-owned equipment to a State LAN/WAN.

35.6 Contingency / Disaster Recovery Plans

- (a) The Contractor and any relevant subcontractor(s) shall have robust contingency and disaster recovery plans in place to ensure that the services provided under this Contract will be maintained in the event of disruption to the Contractor/subcontractor's operations (including, but not limited to, disruption to information technology systems), however caused.
- (b) The contingency and disaster recovery plans must be designed to ensure that services under this Contract are restored after a disruption within (specify the time duration in hours or days in which services must be restored) in order to avoid unacceptable consequences due to the unavailability of services.

- (c) The Contractor and any relevant subcontractor(s) shall test the contingency/disaster recovery plans at least twice annually to identify any changes that need to be made to the plan(s) to ensure a minimum interruption of service. Coordination shall be made with the State to ensure limited system downtime when testing is conducted. At least one annual test shall include backup media restoration and failover / fallback operations.
- (d) Such contingency and disaster recovery plans shall be available for the Department to inspect and to practically test at any reasonable time, and shall be subject to regular updating, revision, and testing throughout the term of the Contract.

35.7 Incident Response Requirement

- (a) The Contractor shall notify the Contract Monitor when any Contractor and/or subcontractor system that may access, process, or store State data or work product is subject to unintended access or attack. Unintended access or attack includes compromise by computer malware, malicious search engine, credential compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures.
- (b) The Contractor shall notify the Contract Monitor within one (1) Business Day of the discovery of the unintended access or attack by providing notice via written or electronic correspondence to the Contract Monitor and Procurement Officer.
- (c) The Contractor shall notify the Contract Monitor within two (2) hours if there is a threat to the Contractor and/or subcontractor's systems as it pertains to the use, disclosure, and security of the Department's Sensitive Data.
- (d) If an unauthorized use or disclosure of any Sensitive Data occurs, the Contractor must provide written notice to the Contract Monitor within one (1) Business Day after the Contractor's discovery of such use or disclosure and, thereafter, all information the State requests concerning such unauthorized use or disclosure.
- (e) The Contractor, within one (1) Business Day of discovery, shall report to the Contract Monitor any improper or non-authorized use or disclosure of Sensitive Data. The Contractor's report shall identify:
 - (1) the nature of the unauthorized use or disclosure;
 - (2) the Sensitive Data used or disclosed;
 - (3) who made the unauthorized use or received the unauthorized disclosure;
 - (4) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and:
 - (5) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
 - (6) the Contractor shall provide such other information, including a written report, as reasonably requested by the State.
- (f) The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of PII or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law, the Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to

indemnify, hold harmless and defend the State and its officials and employees from and against any claims, damages, or other harm related to such security obligation breach or other event requiring the notification.

- (g) This Section 35.7 shall survive expiration or termination of the Contract.

36. SOC 2 Type 2 Audit Report

This section applies to the Contractor and any relevant subcontractor who provides services for the Department's identified critical functions, handles Sensitive Data [see Section 35] and/or hosts any related implemented system for the State under the Contract. For purposes of this section, "relevant subcontractor" includes any subcontractor that assists the Contractor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subcontractors that provide secondary services that are not pertinent to assisting the Contractor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system.

The Contractor shall have an annual audit performed, at its own expense, by an independent audit firm of the Contractor's choosing, of the Contractor's and any relevant subcontractor's handling of Sensitive Data and the Department's critical functions, which are identified as Medical or Insurance Claims Processing Services and shall address all areas relating to Information Technology security and operational processes (see Section 356.). These services provided by the Contractor and any relevant subcontractor that shall be covered by the audit will collectively be referred to as the "Information Functions and/or Processes." Such audits shall be performed in accordance with audit guidance: *Reporting on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2)* as published by the American Institute of Certified Public Accountants (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the Department, to assess the security of outsourced client functions or data (collectively, the "Guidance") as follows:

- 37.1 The type of audit to be performed in accordance with the Guidance is a SOC 2 Type 2 Audit (referred to as the "SOC 2 Audit" or "SOC 2 Report"). The initial SOC 2 Audit shall be scheduled and completed within a timeframe to be specified by the Contract Monitor. All subsequent SOC 2 Audits that are arranged after this initial audit shall be performed on an annual basis and submitted to the Contract Monitor by **March 31st** for the preceding calendar year.
- 37.2 The SOC 2 Audit shall report on the Contractor's and any relevant subcontractor's system(s) and the suitability of the design and operating effectiveness of controls of the Information Functions and/or Processes to meet the requirements of the Contract, including the Security Requirements in Section 36.1 relevant to the following trust principles: **Security, Confidentiality, and Privacy.**
- 37.3 The audit scope of each year's SOC 2 Report may need to be adjusted (including the inclusion or omission of the relevant trust services principles of Security, Availability, Confidentiality, Processing Integrity, and/or Privacy) to accommodate any changes to the Contractor's and any relevant subcontractor's environment since the previous SOC 2 Report. Such changes may include but are not limited to the addition of Information Functions and/or Processes through modifications to the Contract, or due to changes in information technology or operational infrastructure implemented by the Contractor and/or subcontractor. The Contractor and any relevant subcontractor shall ensure that the audit scope of each year's SOC 2 Report engagement shall accommodate these changes by including in the SOC 2 Report all appropriate controls

related to the current environment supporting the Information Functions and/or Processes, including those controls required by the Contract.

- 37.4 The scope of the SOC 2 Report shall include work performed by any subcontractors that provide essential support to the Contractor for the Information Functions and/or Processes for the services provided to the Department under the Contract. The Contractor shall ensure the audit includes all subcontractors operating in performance of the Contract.
- 37.5 All SOC 2 Audits, including those of the Contractor and any relevant subcontractor, shall be performed at no additional expense to the Department.
- 37.6 The Contractor and all relevant subcontractors shall promptly provide a complete copy of the final SOC 2 Report(s) to the Contract Monitor upon completion of each SOC 2 Audit engagement.
- 37.7 The Contractor shall provide to the Contract Monitor, within 30 calendar days of the issuance of each SOC 2 Report, a documented corrective action plan which addresses each audit finding or exception contained in a SOC 2 Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor and/or subcontractor(s) along with the date(s) when each remedial action is to be implemented.
- 37.8 If the Contractor, including any relevant subcontractor, currently has an annual information security assessment performed that includes the operations, systems, and repositories of the Information Functions and/or Processes being provided to the Department under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the Department will determine in consultation with appropriate State government technology and audit authorities whether the Contractor's and any relevant subcontractor's current information security assessments are acceptable in lieu of the SOC 2 Report(s).
- 37.9 If the Contractor and any relevant subcontractor fails during the Contract term to obtain an annual SOC 2 Report by the date specified in Section 37.1 above, the Department shall have the right to retain an independent audit firm to perform an audit engagement of a SOC 2 Report of the Information Functions and/or Processes utilized or provided by the Contractor and any relevant subcontractor under the Contract. The Contractor and any relevant subcontractor agrees to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and will provide the necessary support and cooperation to the independent audit firm that is required to perform the audit engagement of the SOC 2 Report. The Department will invoice the Contractor for the expense of the SOC 2 Report(s), or deduct the cost from future payments to the Contractor.

37. Federal Department of Health and Human Services (DHHS) Exclusion Requirements

The Contractor agrees that it will comply with federal provisions (pursuant to §§ 1128 and 1156 of the Social Security Act and 42 C.F.R. 1001) that prohibit payments under certain federal health care programs to any individual or entity that is on the List of Excluded Individuals/Entities maintained by DHHS. By executing this contract, the Contractor affirmatively declares that neither it nor any employee is, to the best of its knowledge, subject to exclusion. The Contractor agrees, further, during the term of this contract, to check the List of Excluded Individuals/Entities prior to hiring or assigning individuals to work on this Contract, and to notify the Department immediately of any identification of the Contractor or an individual employee as excluded, and of any DHHS action or proposed action to exclude the Contractor or any Contractor employee.

38. End of Contract Transition

The Contractor shall cooperate in the orderly transition of services from this Contract to any subsequent contract for similar services. The transition period shall begin ninety (90) days before the Contract end, or the end date of any contract extension. The Contractor shall work toward a prompt and timely transition, proceeding in accordance with the directions of the Contract Monitor. The Contract Monitor may provide the Contractor with additional instructions to meet specific transition requirements prior to the end of the Contract.

39. Litigation

39.1 When litigation involving any activity under this Contract is filed directly with the Contractor, the Contractor shall promptly notify the Contract Monitor. The notification shall include:

- (a) Name of Court;
- (b) Case number;
- (c) Whether counsel filed or pro se; and
- (d) Amount of claim.

39.2 Whenever there is any progress or activity involving the case, the Contractor shall notify the Contract Monitor to delineate:

- (a) Whether dispositive motions are pending;
- (b) Discovery proceeding;
- (c) Trial set (date);
- (d) Trial held;
- (e) Judgment rendered;
- (f) Any appeal noted.

All rulings on dispositive motions, judgments and settlements, and the terms of any judgment or settlement shall also be reported, regardless of whether the named defendant is the corporate defendant, a corporate subcontractor, or an individual employed by the Contractor or a subcontractor if the suit arises from performance of the services under this Contract. For any claim filed with the Contractor, the Contractor shall cooperate with the Department with the defense of such claim. For any claim filed with the Department, the Department will notify the Contractor and will coordinate with the Contractor for any necessary information needed in the suit.

39.3 The Contractor shall participate in providing expert testimony for any litigation filed during the Contract period stemming from a Medical Health claim.

40. Miscellaneous

40.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.

40.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

Dr. Samuel Ross
Chief Executive Officer

By: SECRETARY, DPSCS

Or Designee:

Date

Approved for form and legal sufficiency
this ____ day of _____, 2017.

Assistant Attorney General

EXHIBIT A – CONTRACT AFFIDAVIT

A. AUTHORITY

I hereby affirm that I, _____ (name of affiant) am the _____(title) and duly authorized representative of _____(name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

- (1) Corporation — domestic or foreign;
- (2) Limited Liability Company — domestic or foreign;
- (3) Partnership — domestic or foreign;
- (4) Statutory Trust — domestic or foreign;
- (5) Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name _____ and _____ Department _____ ID
Number: _____ Address: _____

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name _____ and _____ Department _____ ID
Number: _____ Address: _____

C. DRUG AND ALCOHOL FREE WORKPLACE

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) The business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

- (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
- (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
- (c) Prohibit its employees from working under the influence of drugs or alcohol;
- (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business's policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;
- (h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
 - (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
- (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

D. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, § 6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

E. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

(1) Been convicted under state or federal statute of:

- (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
- (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
 - (a) §7201, Attempt to Evade or Defeat Tax;
 - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
 - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,
 - (d) §7205, Fraud and False Statements, or
 - (e) §7207, Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286, Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;

(12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review;

(13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review;

(14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review; or

(15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14) above, except as follows (indicate reasons why the

affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

F. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

G. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

H. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

I. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:

(a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and

(b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities: _____

J. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

K. I FURTHER AFFIRM THAT:

Any claims of environmental attributes made relating to a product or service included in the Bid or Proposal are consistent with the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims as provided in 16 CFR §260, that apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service.

L. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that

nothing in this Affidavit or any contract resulting from the submission of this Bid/Proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (printed name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

EXHIBIT B

SCOPE OF SERVICES FOR INFECTIOUS DISEASE AND PHARMACY SERVICES

A. Overview:

The Department is responsible for the health care of the Inmates in its custody, and housed throughout the State at Department operated correctional facilities. The Inmate population has a significant number of individuals needing treatment and ongoing management of Infectious Diseases. To address this need, and to manage the costs associated with treatment of those diseases, the Department has agreed to contract with BSH to provide medical treatment, prescription of medications and drug purchasing for Inmates with Infectious Diseases. Contractor qualifies as a 340B covered entity under the federal 340B drug program established pursuant to Section 340B of the Public Health Service Act, codified at 42 USC section 256b. In its capacity as a 340B covered entity, Contractor agrees to provide its pharmacy services through a 340B contract pharmacy authorized by Contractor and approved by the Department.

The scope of this Contract is limited to treatment of Inmate Patients for HIV and Hepatitis C by the infectious disease medical professionals employed by BSH pursuant this Contract, and infectious disease consultation services as directed by the Department's Medical Director. In the event the Department's Medical Director or the Department's Medical Contractor seek services from BSH for outpatient specialty services not covered by the terms of this Contract those services shall be billed to the Department's Medical Contractor per the terms of the Inmate Medical Contract.

B. Definitions

In Exhibit B, the following terms have the meaning ascribed to them in this Section B. All other capitalized terms that are not proper nouns have the meaning ascribed to them in the Contract.

1. "Contract" means the contractual agreement DPSCS Q0016026 between the Department and Contractor.
2. "Health Care Services" means scheduled non-acute face-to-face outpatient consultative, diagnostic, treatment, evaluation, testing and other related medical services provided by medical professionals employed by or under contract with BSH to Inmates of the Department, including the treatment of Infectious Diseases. Between scheduled face-to-face evaluations, Health Care Services are also provided, to the extent possible, by telemedicine technologies in place at the Department's correctional facilities and BSH. Health Care Services do not include acute, emergency, or inpatient care, or care for conditions unrelated to Infectious Diseases.
3. "Infectious Diseases" means diseases caused by infection with the hepatitis C virus, human immunodeficiency virus, or any other agent that the parties agree causes a communicable disease (e.g. tuberculosis, MRSA, meningitis).
4. "Inmate Patient" means a person who:
 - a. is an Inmate incarcerated at a DPSCS Facility;
 - b. is infected with an Infectious Disease-causing agent; and

- c. meets the current patient definition guidelines established by the Health Resources and Services Administration (“HRSA”) published at 61 Fed. Reg. 55156 (Oct. 24, 1996), or any subsequent guidelines established by HRSA that amend or supersede them.
5. “Treatment Protocol” means the Department’s medical protocol developed to specify the recommended therapies for treatment of an Infectious Disease.

C. Infectious Disease Medical Provider Team and 340B Prescription Process

1. Contractor will employ qualified infectious disease medical providers (“Contract Providers”), to include one (1) physician (FTE), one (1) nurse (FTE), and one (1) administrative support position (FTE) to serve as the Infectious Disease Medical Provider Team and to provide Health Care Services for Inmate Patients. The Contract Providers will evaluate, provide treatment, and prescribe medication for Infectious Diseases, to include the following:
 - a. Conduct an initial face-to-face evaluation of the Inmate Patient onsite at the Contractor’s hospital and at least one (1) annual face-to-face evaluation thereafter.
 - b. Document all Inmate Patient encounters in the medical record with a copy of the encounter available to Medical Contractor via Electronic Health Record.
 - c. After the initial face-to-face evaluation, meet with the Inmate Patient at least quarterly by means of telemedicine unless face-to-face encounters are medically necessary or otherwise required for 340B program compliance.
 - d. Be available for onsite consultations/infirmarary rounds on all Inmates at designated DPSCS facilities when requested and provide general Infectious Disease support for Inmate Patients.
 - e. Contract Providers will provide Infectious Disease consultation for the Department and collaborate with the Department’s Medical Director as well as the Medical Contractor’s infectious disease control nurses, and when requested at the Department’s quarterly infectious disease meeting.
2. Contract Providers shall adhere to the Treatment Protocol applicable to the Infectious Disease carried by the Inmate Patient, including prescribing any drugs indicated under that Treatment Protocol. Prescriptions for Inmate Patients will be issued by Contractor Provider’s prescribers within Contractor’s facilities and transmitted to the Department-Approved 340B Contract Pharmacy.
3. When prescription drugs are ordered, the Contract Providers shall enter the orders into the BSH Electronic Medical Record (EMR). Inmate Patients shall receive a thirty (30)-day supply of drugs with up to eleven (11) refills, to be purchased by the Contractor from a wholesaler and shipped to the Department-Approved 340B Contract Pharmacy, unless the prescribed drug is on the Excluded Drug List, described in Section C.4 below. The Department-Approved 340B Contract Pharmacy will package, track, and deliver the dispensed prescriptions to the appropriate correctional facilities.

4. Contractor and the Department may agree on a list of drugs (“Excluded Drug List”), identified by 11-digit National Drug Code, that will not be filled by the Department-Approved 340B Contract Pharmacy using Contractor’s drugs. Any drug that is not on the Excluded Drug List shall be filled by the Department-Approved 340B Contract Pharmacy using Contractor’s drugs. The Excluded Drug List is attached at Exhibit B-1. Contractor and the Department may add a drug to the Excluded Drug List, which drug shall be effectively excluded once an authorized representative of Contractor and Department have both signed the corresponding line on Exhibit B-1.

D. Department-Approved 340B Contract Pharmacy

1. The Department shall have the right to review the proposed contract pharmacy agreement (“CPA”) between Contractor and the Department-Approved 340B Contract Pharmacy to determine whether it is suitable for the services contemplated under the Contract. The CPA will at a minimum require the Department-Approved 340B Contract Pharmacy to:
 - a. Dispense and deliver medications to locations designated by the Department, and in a manner prescribed by the Department.
 - b. Generate computerized utilization review reports in a form and format subject to the approval of Contractor and the Department. The utilization review reports shall be comprehensive, including a monthly pharmacy services report with a rolling year of data (Cost of Medications broken down by Infectious Disease and by facility site, Inmate’s name, age, SID number, gender, race; number of patients medications by Infectious Disease; number of prescriptions per patients, etc.)
 - c. Maintain documentation of Pharmacy Services performed under this Contract consistent with the requirements of the Maryland Board of Pharmacy and the federal 340B program. The Department-Approved 340B Contract Pharmacy shall provide copies of said records to the Department upon written request.
 - d. Agree to exclude the drugs on the Excluded Drug List from the scope of the CPA.

E. Obligations of the Contractor

For and in consideration of the compensation to be paid by the Department to the Contractor hereunder, the Contractor agrees to perform such actions or undertakings necessary or reasonable to carry out its obligations and commitments under this Contract. The Contractor agrees to perform the following duties, obligations, and undertakings:

1. The Contractor shall comply with the requirements of the 340B program.
2. Contractor shall ensure that its Department-Approved 340B Contract Pharmacy is registered with HRSA at the first available opportunity, and that the registration is maintained for the duration of its relationship with Department-Approved 340B Contract Pharmacy.

3. The Contractor shall require its Department-Approved 340B Contract Pharmacy to ensure that all participating parties in this program are licensed and/or accredited for their respective areas of pharmacy practice in accordance with BSH processes, policies and procedures. Upon written request of the Department, documentation of such licensing and/or accreditation will be provided.
4. The Contractor shall maintain documentation of pharmacy services performed under this Contract consistent with the rules and regulations of the federal 340B program, including appropriate documentation of treatment protocols and all medical services provided. The Contractor shall provide copies of said records to the Department upon written request.
5. The Contractor shall track and monitor 340B drug purchases using appropriate 340B management software and methods agreed upon between it and the Department.
6. The Contractor shall accept relevant clinical pharmaceutical questions regarding 340B processes from infectious disease medical providers, Department officials, or the Medical Contractor's Clinicians concerning the Inmate Patients.
7. The Contractor shall provide detailed information on the drugs prescribed for Inmate Patients in the form and format required by the Department for submission to the Department's Pharmacy and Therapeutics Committee in an effort to:
 - a. Keep track of all drugs being prescribed to the Inmate Patients to identify possible negative interactions;
 - b. Include the drugs prescribed by the BSH infectious disease medical providers for Inmate Patients on all reports to the Department as a separate 340B medication report; and
 - c. Maintain documentation concerning all drugs prescribed for Inmate Patients consistent with what is required for the 340B medications and in compliance with the Department's pharmacy manual review and ensure that correct documentation in the EHR entries, when required, are made through preprinted medication administration records (MARs) or an electronic medication administration record (eMAR) process, which is appropriate for pharmaceutical documentation consistent with the licensure and licensing related to medication management.

F. Obligations of the Department

For and in consideration of the services provided by the Contractor hereunder, the Department agrees to perform the following duties, obligations and undertakings, either itself or through its Medical Contractor:

1. The Department, through its Pharmacy Contractor, shall be responsible for the administration of prescription drugs to Inmate Patients and the implementation of any Infectious Disease Treatment Protocols. The Department shall also be responsible for complying with those guidelines and procedures set forth under the Treatment Protocol.
2. The Department shall be responsible for complying with any applicable federal, state, or local laws or regulations regarding its custody of drugs dispensed by BSH and/or its

Contract Pharmacies for Inmate Patients. The Department is solely responsible for the drugs in its custody, and the Contractor shall not be liable for any misbranding, mislabeling, mishandling, or adulteration of BSH's drugs once they are in Department's possession. The Department is solely at risk for the loss, spoliation, or destruction of BSH's drugs once they are in the Department's possession. The Department represents and warrants that it shall not, under any circumstances, take title to 340B program drugs dispensed by the Contractor and/or its Contract Pharmacies. By administering drugs purchased through the 340B program to Patients, the Department represents and warrants that it is serving as an agent of the Inmate Patient, BSH, Department-Approved 340B Contract Pharmacy, or some combination of them.

3. The Department will provide administrative, management, and nursing support services as required on-site at the Department's Facilities.
4. The Department will be responsible for paying for all necessary and appropriate compensation under this Contract as set forth in Section 4.2 of the Contract.
5. The Department's Medical Director shall be authorized to make the final decision in the event that any non-emergency medical decisions or orders rendered by BSH conflict with those made by the Department.

G. Mutual Responsibilities

1. All parties shall develop interagency procedures to facilitate implementation of the Contract and to include any necessary procedures in their respective policy manuals and documents.
2. The parties shall coordinate and cooperate in any state and federal audit requirements applicable to the Agreement, including but not limited to 340B program audits conducted by HRSA, a unit of the United States Department of Health and Human Services ("HHS"), and/or drug manufacturers, in accordance with 42 U.S.C. § 256b(a)(5)(C). The Department shall also cooperate with any internal compliance audits conducted by the Contractor.

H. Credentials /References

The Department will delegate credentialing to the Contractor subject to review and approval of the Contractor's Credentialing Policy and Procedures. The Contractor will compile the credentials and references of all personnel which the Contractor recruits to provide services under this Contract. The Contractor shall be responsible for maintaining and updating all credentialing information on personnel hired or retained by the Contractor to provide services under this Contract. The Contractor will provide verification to the Department of renewals of licenses, permits and certificates for all personnel provided by the Contractor hereunder within thirty (30) days of receiving a written request for such verification.

EXHIBIT B-1

EXCLUDED DRUG LIST

Contractor and the Department agree that the following drugs shall not be filled by the Department-Approved 340B Contract Pharmacy using Contractor's drugs:

Drug	NDC	Contractor Signature	Contractor Rep. Name	Department Signature	Department Rep. Name	Effective Date
Harvoni	61958-1801-01					