



**State of New Mexico
General Services Department**

Contract

Awarded Vendor:

0000126647

Centurion Correctional Healthcare of New Mexico LLC
7700 Forsythe Boulevard
Saint Louis MO 63105-1807

Telephone No. (703) 749-4600

Contract Number: 16-770-1300-0098

RFP Number: 60-770-15-05163

Payment Terms: See ContractF.O.B.: See ContractDelivery: See Contract**Ship To:**

New Mexico Corrections Department
Adult Prison Division
4337 NM 14
Santa Fe NM 87508

Procurement Specialist: **Natalie Martinez**Telephone No.: (505) 827-0251**Invoice:**

Same as Ship To

For questions regarding this contract please contact:
Lori Vigil (505) 827-8616

Title: **Inmate Medical Services – Pharmacy Services**Term: **May 27, 2016 – May 26, 2017****This Contract is made subject to the “terms and conditions” shown as indicated in this Contract.****Accepted for the State of New Mexico**

New Mexico State Purchasing Agent

Date: 5/27/2016

Purchasing Division, 1100 St. Francis Drive, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472

STATE OF NEW MEXICO

NEW MEXICO CORRECTIONS DEPARTMENT

GENERAL SERVICES CONTRACT #16-770-1300-0098

THIS AGREEMENT is made and entered into by and between the State of **NEW MEXICO CORRECTIONS DEPARTMENT**, hereinafter referred to as the "Agency," and **CENTURION CORECTIONAL HEALTHCARE OF NEW MEXICO LLC**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Agency.

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**

The Contractor shall perform the following work outlined in the Scope of Work which is hereby incorporated and made part of this Contract as Attachment I.

2. **Compensation.**

A. The Agency shall pay to the Contractor in full payment for goods and services satisfactorily performed pursuant to the Scope of Work (Attachment I) and as delineated in Budget, which is hereby incorporated and made part of this Contract as Attachment II, such compensation not to exceed Eleven Million dollars (\$11,000,000.00) during the first year, including applicable gross receipts tax. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed Eleven Million dollars (\$11,000,000.00) during the first year. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide goods and services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Agency when the goods and services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for goods and services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those goods and services in excess of the total compensation amount being provided. To the extent that the Agreement is renewed for years two, three and/or four, the compensation for those years is contained in Attachment II: Budget. Additional terms regarding compensation are also contained in Attachment II: Budget.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties pursuant to Paragraph 1, Scope of Work, and to approval by the Agency. All invoices **MUST BE** received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID.**

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Security Clearances and Background Checks:

The Contractor and its employees, agents, or independent agents agree to cooperate with and abide by any and all rules and regulations set forth by the Agency so as not to interfere with the daily operations of the user agency or to jeopardize the health and safety of any employees, inmates or the general public. The Contractor and its employees, sub-contractors, or their agents who will have access to NMCD properties and inmates are subject to security clearances and/or background checks.

Any security clearances and/or background checks required by the Agency for the Contractor's employees, contractor's agents, employees or other agent must be obtained prior to commencement of the job. User agency reserves the right to deny any employee, agent, or independent agent of the Contractor access to the Agency property should that individual fail the criteria required for the security clearance or be found to be in violation of NMCD policies and procedures.

Agency reserves the right to provide and escort and/or require full time supervision for the Contractor and its employees, agents, or independent agents during any or all phases of a project should user agency feel it is necessary.

Agency reserves the right to escort any employee, sub-contractor or other agent of the Contractor off of the Agency property for any inappropriate conduct or actions that jeopardizes the safety, security, or well being of the facility. If such conduct or action should occur, then, this agreement may be terminated immediately.

4. Cooperation with NMCD Investigations:

In addition to the foregoing, the Contractor must furnish all information and reports required by, or pursuant to, the rules, regulations, and policies of the NMCD, and will permit access to, and the interview of, its employees, subcontractors, or other agents as well as the examination and copying of its records, unless such materials are legally privileged, by the NMCD Office of Professional Standards, the Security Threat Intelligence Unit and the Equal Employment Opportunity Officer and the United States Department of Justice, the New Mexico Department of Public Safety, the New Mexico General Services Department, the New Mexico Risk Management Division, and/or the New Mexico Workforce Solutions Department, and will otherwise fully cooperate with any such investigation. Any willful violation of this requirement will be grounds for immediate termination of this agreement and removal of the Contractor from the property.

5. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE AGENCY. This Agreement shall be for one (1) calendar year. After the first year, the NMCD reserves the option of renewing on an annual basis for up to three (3) additional one-year terms. In no case will the Contract, including all renewals thereof, exceed a total of four (4) years in duration. If the Contractor determines that it does not want to renew the Agreement for years two, three or four, it must provide six (6) months written notice to the Agency. The Agency must give the Contractor sixty (60) days written notice if it determines that it will not renew the Agreement for years two, three or four.

The contract may be terminated earlier pursuant to paragraph 3 (Security Clearances and Background Checks) paragraph 4 (Cooperation with NMCD Investigations) paragraph 6 (Termination), or paragraph 7 (Appropriations).

6. Termination.

A. Grounds. The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement. The terminating party shall provide sixty (60) days written notice to the other party.

B. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the

Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

C. Termination Management. Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

7. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

8. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing general services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority. With appropriate waivers or approvals from the General Services Department, the Contractor will be authorized to drive a state car on state property only in order to more efficiently perform assigned contractual duties, such as delivering food to various units within a prison, etc.

9. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

10. Subcontracting.

The Contractor will be subcontracting the services to be performed or the goods to be provided under Section 2 of the Scope of Work (Attachment I) of this Agreement to Boswell Pharmacy Services, LLC. Contractor shall not use additional or new subcontractors without the prior written approval of the Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

11. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

12. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

13. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

14. Conflict of Interest; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 14 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 14 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 14 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Agency and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 14(B).

15. Amendment.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

16. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

17. Penalties for Violation of Law.

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

18. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

19. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

20. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

21. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

22. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

23. New Mexico Employees Health Coverage.

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenemexico.state.nm.us/>.

24. Employee Pay Equity Reporting.

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes

first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself. Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

25. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

26. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

27. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Agency:

Diane Montoya
P.O. Box 27116
Santa Fe, NM 87502-0116
(505) 827-8611
diane.m.martinez@state.nm.us

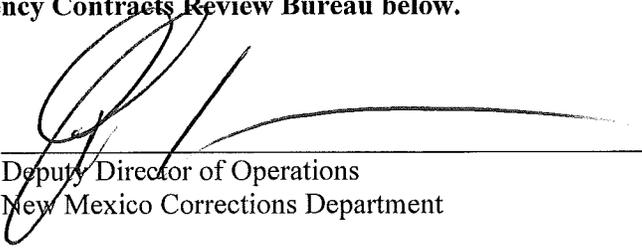
To the Contractor:

Steven H. Wheeler
1593 Spring Hill Road, Suite 600
Vienna, VA 22182
(703) 749-4600
SWheeler@centurionMCare.com

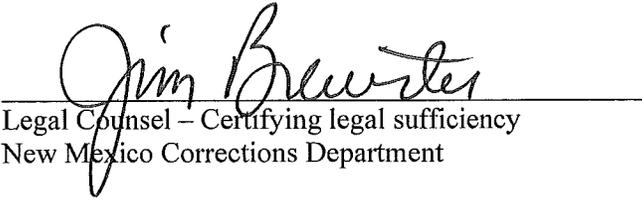
28. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

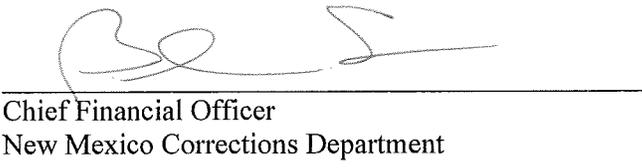
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the Agency Contracts Review Bureau below.

By: 
Deputy Director of Operations
New Mexico Corrections Department

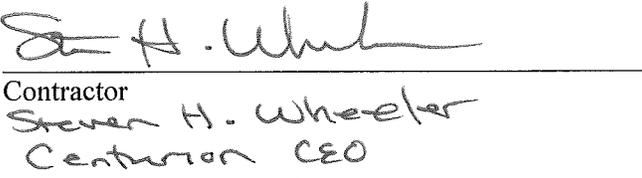
Date: 5/23/16

By: 
Legal Counsel - Certifying legal sufficiency
New Mexico Corrections Department

Date: 5-23-16

By: 
Chief Financial Officer
New Mexico Corrections Department

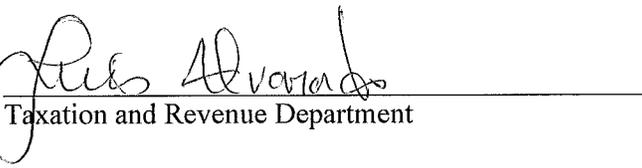
Date: 5/23/16

By: 
Contractor
Steven H. Wheeler
Centurion CEO

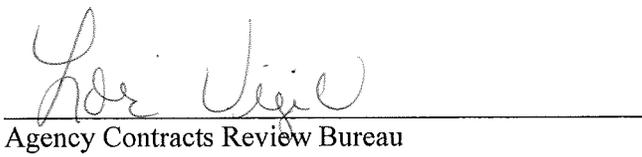
Date: 5-20-16

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

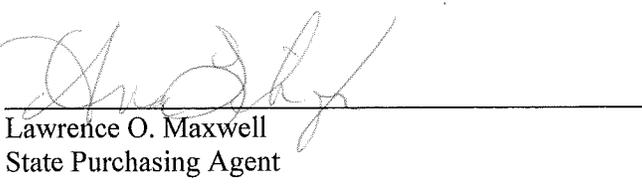
ID Number: 03-353474-00-8

By: 
Taxation and Revenue Department

Date: 5/23/16

By: 
Agency Contracts Review Bureau

Date: 5/23/16

By: 
Lawrence O. Maxwell
State Purchasing Agent

Date: 5/26/16

ATTACHMENT I
SCOPE OF WORK

The Contractor will perform the work delineated in Section 3 of this Scope of Work, and the Contractor has subcontracted with Boswell Pharmacy Services, LLC (“Pharmacy”) to perform the work delineated in Section 2 of this Scope of Work.

SECTION 1: DEFINITIONS

“Actual Acquisition Cost (“AAC”)” – Actual Acquisition Cost is defined as the actual invoice cost to Pharmacy for medications as set forth on the actual invoice from the sellers of the medications to Pharmacy, including discounts, charge-backs and rebates shown on the face of the invoice, including subsequent rebates received. Pharmacy affirms that the AAC shown on the invoice is the lowest price available to the Pharmacy for the specific item and that no negotiations have taken place between the seller of the medication and the Pharmacy to charge a higher invoice price for the purpose of the Pharmacy receiving a rebate at a later time.

“Agency” is defined as the New Mexico Corrections Department.

“Agency Facilities” is defined as New Mexico Correction Department correctional institutions as listed in the Comprehensive Healthcare Agreement.

“Clinical Intervention” is defined as Pharmacy interaction with prescribers and other health care workers to optimize medication usage at Agency Facilities.

“Clinical Pharmacist” is defined as an appropriately licensed and registered pharmacist with advanced training in clinical pharmacy.

“Comprehensive Healthcare Agreement” is defined as the contract between Contractor and Agency labeled as Contract No. 16-770-1300-0097.

“Contractor” is defined as Centurion Correctional Healthcare of New Mexico, LLC.

“Formulary” is defined as a proprietary list of federal legend medications and over-the-counter medications published by Contractor.

“Formulary Medication” is defined as any federal legend medication or over-the-counter listed on the Contractor designated Formulary.

“Inmate” is defined as any individual for whom Contractor is responsible for the provision of healthcare services pursuant to the Agency Contract.

“Medication Order” is defined as a written, verbal, electronic, facsimile or other communication from a physician or other health care practitioner (or their authorized agent) working on behalf of Contractor who is licensed to prescribe Formulary and Non-Formulary medications by applicable, State and/or Federal agencies.

“Non-Formulary Medication” is defined as any federal legend medication or over-the-counter medication not listed on the Formulary.

“Night Locker Medications” is defined as any federal legend medications that are stored in a secure area at a Facility for emergency and first “stat” doses.

“Pharmacy” is defined as Boswell Pharmacy Services, LLC.

“Pharmacy and Therapeutics Committee” or “P&T” is defined as a committee which meets to review medication utilization, to review new medications that have received approval of the United States Food and Drug Administration, and to discuss matters relevant to such medication utilization as requested by Contractor.

“Pharmacy Contract” is defined as this Agreement.

“Pharmacy Subcontract” is defined as the subcontract between Contractor and Pharmacy to provide the pharmaceuticals and related services as set forth herein.

“Prescription” is defined as an order, for the preparation and administration of a medication to an Inmate. “Provider” is defined as any physician, doctor, dentist, nurse, pharmacist or other person authorized by New Mexico law to prescribe drugs or medications, including both controlled substances and drugs which are not controlled substances.

“RFP” is defined as New Mexico Corrections Department RFP No. 60-770-15-05163.

“Stock order” is defined as a medication order not specific to a particular Inmate patient.

SECTION 2: OBLIGATIONS AND RESPONSIBILITIES OF PHARMACY

- 2.0 Relationship Between Parties and Pharmacy. Contractor has selected Pharmacy as the vendor best able to provide the pharmaceuticals and related services outlined and contained in the RFP and this Agreement. Agency has agreed that Contractor, as the comprehensive healthcare vendor, will subcontract with Pharmacy to provide all of the services outlined or delineated in this Agreement. Contractor has provided Agency with a copy of the Pharmacy Subcontract, and Agency approves same. While Agency has no direct contractual relationship with Pharmacy other than as a third-party beneficiary to the Pharmacy Subcontract, Agency shall exercise absolute direction over the Pharmacy’s provision of goods and services contained or delineated in Section 2 of the Scope of Work (Attachment I) of this Agreement with Contractor. Agency understands and agrees that Contractor is not a pharmacy provider and does not intend to directly provide the pharmaceuticals or related services contained or delineated in Section 2 of the Scope of Work (Attachment I) of this Agreement. Contractor may not use additional subcontractors to perform work under this Agreement without the prior written approval of the Agency.
- 2.1 Compliance with Agency Contract terms. Contractor has provided Pharmacy with a copy of the Comprehensive Healthcare Agreement and any amendments thereto. Pharmacy agrees to fully abide by the terms and conditions of the Comprehensive Healthcare Agreement as it relates to pharmaceuticals or related services, and those terms and conditions are hereby included and incorporated by reference.
- 2.2 Scope of Services. Pharmacy agrees to provide comprehensive pharmaceutical services as outlined in the Comprehensive Healthcare Agreement, including but not limited to:
- 2.2.1 Provide pharmaceutical services as required of Contractor under the Comprehensive Healthcare Agreement in accordance with the State of NM Board of Pharmacy, ACA and NCCHC standards. These services shall be sufficient to meet the needs of the Agency. The Pharmacy shall abide by all applicable federal and state regulations relevant to prescribing, procurement, dispensing, administration, distribution, accounting, and disposal of pharmaceuticals. The Pharmacy shall be responsible for all mandatory record keeping and accountability applicable to all legal requirements.
- 2.2.2 Provide Patient Specific Formulary and Non-Formulary Medications for Inmates, in the prescribed dosages not to exceed a thirty (30) day supply unless it is otherwise agreed upon between Pharmacy and Contractor, utilizing one of the following types of packaging:

- 2.2.2.1 “Blister” cards for all oral, solid dosage forms (tablets and capsules) or a mutually agreed upon packaging;
 - 2.2.2.2 liquid, oral medications; and
 - 2.2.2.3 injectable medications.
- 2.3 Automatically substitute generic medications, with at least a bioequivalent (“A”) rating where therapeutically appropriate and agreed to by Contractor.
- 2.4 Medication Delivery.
- 2.4.1 On-Site Deliveries. Pharmacy deliveries will be done six days per week to all Agency Facilities (Monday – Saturday).
 - 2.4.1.1 Pharmacy will provide 24 hour a day, 7 days a week emergency service via the local back-up pharmacies to all of the Agency Facilities at no additional cost to the Agency for the delivery service.
 - 2.4.1.2 Pharmacy’s dedicated courier leaves at 7:00pm ET Monday–Friday and 4:00pm ET on Saturday.
 - 2.4.2 Holiday and Emergency Deliveries
 - 2.4.2.1 Pharmacy shall receive requests via calls made to Pharmacy’s toll-free number 24 hours a day, 365 days a year. A live operator will forward a message to the pharmacist on call. The pharmacist on call will telephone the Agency Facility and arrange for and confirm that the “off hour” delivery to the Agency Facility will take place within two (2) hours, including delivery on Saturdays, Sundays and holidays as needed on an emergency basis.
 - 2.4.2.2 Pharmacy will provide and maintain starter packs at each Agency Facility for commonly used medications. This supply would be in addition to sealed emergency medical kits that will be provided in accordance with emergency procedures.
 - 2.4.2.3 For stat medication orders, Pharmacy will provide emergency pharmacy services 24 hours a day, 365 days a year through designated backup pharmacies. A Pharmacy pharmacist will work with contracted backup pharmacies to facilitate delivery of the medication. If the backup pharmacy is unable to deliver the medication to the Agency Facility, Pharmacy will arrange for transport at no additional cost to the Agency.
 - 2.4.3 Prescribed pharmaceuticals shall be available for administration no later than the next business day following order transcription, except in emergencies. To ensure delivery on the following business day, all medications must be ordered by 3:00 PM ET Monday through Saturday. Business days shall include every day, Monday through Saturday but shall exclude Sundays. Sunday orders shall be delivered Tuesday, unless the order constitutes an emergency order to be delivered in accordance with section 2.4.2.1 above. Pharmacy shall bear the shipping expense for recovering all discontinued, unused or expired medications from the Agency Facilities, and the shipping expense for all medications delivered to Agency Facilities. Contractor and Pharmacy may alter delivery deadlines upon mutual written agreement.
- 2.5 Provide Contractor and Agency with remote access during regular business hours to Pharmacy’s online web portal, which will provide the Agency with the ability to review real time data regarding numbers of prescriptions filled, cost and other information. Pharmacy’s software available via the web shall provide a selection of utilization reports as well as the ability to generate paper Medication Administration Records and Narcotic Controlled Log Books to all Agency Facilities.

- 2.6 Provide the necessary support materials, including training, for the transmission and procurement of pharmaceutical orders.

- 2.7 Provide drug regimen review. Provide a reasonable review in accordance with all applicable laws of an Inmate’s medical record prior to dispensing each Pharmaceutical Order. The review shall but not limited to include evaluating the medical and prescription order for:
 - 2.7.1.1 Over-utilization or under-utilization
 - 2.7.1.2 Therapeutic duplication
 - 2.7.1.3 Poly-Pharmacy
 - 2.7.1.4 Drug-disease contraindications
 - 2.7.1.5 Drug-drug-interactions
 - 2.7.1.6 Incorrect drug dosages or duration of drug treatment
 - 2.7.1.7 Drug-allergy interactions
 - 2.7.1.8 Clinical abuse/misuse
 - 2.7.1.9 Non-Formulary Drug Requests

- 2.8 Upon recognizing any matters related to the above, Pharmacy shall take appropriate steps to avoid or resolve the problem with Contractor’s Provider and Agency staff.

- 2.9 Make available to the Contractor healthcare staff a Clinical Pharmacist for medication consultation and drug therapy recommendations via telephone twenty-four (24) hours per day, each day of the year as well as a contracted back up Pharmacy near each Agency Facility for emergency medication needs. This will include backup plans for urgent/emergent drug delivery in the event of (for example) hazardous conditions or after-hours drug delivery. Maintain toll-free incoming facsimile line(s) for Agency Facilities to communicate with Pharmacy as needed.

- 2.10 Implement a Continuous Quality Improvement (CQI) program for the pharmacy services demonstrating a knowledge and focus on outcome measures and indicators, including but not limited to the following:

| | | | | | |
|--|---|---|--|---|--|
| | Mail Order Prescriptions | The number of prescriptions (routine and emergency) that were received timely | Total number of mail order prescriptions sent on a monthly basis | Compliance Rates: Year 1 – 92% Subsequent years – 95% | |
| | Medication Returns - The credit for every eligible returned medication is reconciled to the month the medication was returned | | | Compliance Rates: Year 1 – 92% Subsequent years – 95% | |
| | Medication Error Rate- The Statewide medication error rate is not more than 0.05 | Examples: Wrong Drug Labeled Wrong Wrong Patient Label | | Compliance Rates: 99% - 99.5% | |

Contractor will work with the Agency and Pharmacy to develop drug utilization criteria and performance improvement metrics to measure for select medications such as antidepressants and hypnotics to prevent the use of unnecessary or inappropriate drug therapy and avoid polypharmacy-related complications. The results of these studies will be presented to the Pharmacy and Therapeutics Committee. Contractor, Pharmacy and the Agency will implement a Drug Utilization Review (DUR) program that will directly improve the effectiveness of drug therapy with an emphasis on appropriate psychotropic utilization in women.

- 2.11 Provide a method by which to notify the prescribing authority of the impending expiration date of a medication order. This will allow the prescriber to review therapeutic response to the medication and permit continuation or modification of the medication order.
- 2.12 Provide monthly Reports for the following regular and other requested utilization reports that contains:
 - 2.12.1 prescription totals for the Agency Facility;
 - 2.12.2 prescription totals for the Agency Facility by prescriber; and
 - 2.12.3 complete prescription information of scripts dispensed.
 - 2.12.4 Inmates on specific drugs by prescribing provider
 - 2.12.5 Inmates enrolled in a chronic care clinic
 - 2.12.6 Inmates whose medications are within seven days of expiration
 - 2.12.7 Number of inmates per facility on psychiatric medications
 - 2.12.8 Non-Formulary medication usage per facility
 - 2.12.9 Pharmacy reports by category of medication and number of inmates
 - 2.12.10 Number of inmates being prescribed one or more of the ten most expensive drugs, and costs of those drugs
- 2.13 Provide and maintain a supply of emergency medications at each Agency Facility in conformity with state laws, regulations and Agency Facility requirements.
- 2.14 Maintain in good standing all necessary licenses, permits and registrations under applicable State and Federal Law during the initial and any renewal term of this Agreement.
- 2.15 Participate in Pharmacy and Therapeutic meetings. Participate in formulary development and management review, policies and procedures review, provider prescription practices, medication error review, adverse drug reaction review, and other pharmacy, nursing and physician-related issues of drug therapy with Agency and Contractor.
- 2.16 Arrange for the disposal of all pharmaceuticals, return of outdated, discontinued, excess, or unusable medications.
- 2.17 Maintain current knowledge of laws and regulations so that Pharmacy can properly advise Contractor.
- 2.18 Inventory: Pharmacy shall be responsible for developing and implementing a system to assist Contractor staff to track the utilization of pharmaceutical products from stock and starter pack inventory at Agency Facilities to enable charges to be allocated accurately. Establish an inventory control system to affect availability of necessary drugs and to protect against loss of pharmaceuticals and controlled substances.

- 2.19 **Quality Assurance:** Pharmacy shall meet at the request of Contractor or Agency to discuss any medication errors or similar issues concerning its performance and shall take prompt measures as to the matters raised by the Contractor. Contractor quality concerns shall be communicated to a quality assurance representative designated by the Pharmacy.
- 2.20 **Compliance with Agency Policies and Regulations:** If Pharmacy is providing services to Contractor on property owned, operated or utilized by Agency, Pharmacy shall comply, and shall ensure its employees, independent contractors and agents, comply with the policies and regulations of Agency, including but not limited to security protocols.
- 2.21 **Compliance with Contractor Policies:** Pharmacy shall comply, and shall ensure its employees, independent contractors and agents, comply with Contractor and/or Agency policies governing the Scope of Work provided by Pharmacy and agrees to notify Pharmacy of any changes in policy or procedure as related to the Pharmacy as they occur.
- 2.22 **Regional Consultant/Clinical Pharmacist.** Pharmacy agrees to work closely with the Contractor's clinical pharmacist who will oversee and administer the procurement, dispensing, and administration of pharmaceuticals throughout the system. The Contractor's pharmacist will reside in New Mexico. This individual will be a clinical pharmacist who will capably advise providers on the substitution of medically appropriate cost effective medications to individual inmates. Every Agency Facility will receive a monthly visit during which time Contractor's pharmacist will conduct inspections to monitor and ensure compliance with all laws, rules and regulations, and standards related to pharmacy services.
- 2.23 **Lists of Most Frequently Prescribed and Most Expensive Medications.** The Pharmacy shall maintain a list of the 25 most frequently prescribed legend medications and the 25 most expensive medications prescribed within the prison facilities on a monthly basis.

SECTION 3: OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR

- 3.1 **General Scope of Responsibility.** To furnish all legally required Medication Order information to Pharmacy on any Formulary and Non-Formulary Medications prescribed for Inmates. Prescription information shall include the inmate's name, inmate's number, prescriber's name, drug name, route or administration, strength, dosage, frequency, and the existence of any known inmate allergies to any medication(s). All prescriptions will bear the signature of an authorized prescriber and otherwise conform to the requirements of a valid drug prescription. Prescriptions shall be sent to Pharmacy in conformity with all applicable state and federal regulations. Contractor additionally agrees to support the preferential use of the Pharmacy web ordering process over faxing of orders wherever possible.
- 3.2 **Compliance with Comprehensive Healthcare Agreement.**
- 3.2.1 Contractor will ensure that Pharmacy procures all necessary insurance as outlined in the Comprehensive Healthcare Agreement and meets its indemnification and additional insured obligations as set forth in that Agreement.
 - 3.2.2 Contractor will administer the medications to the inmates to help properly treat medical conditions, while the Pharmacy will dispense to the Contractor the needed medications.
 - 3.2.3 The Contractor shall make provision for on-site administration of Inmate prescriptions seven days per week. The Contractor shall administer psychotropic medications in a safe and controlled fashion in accordance with NMCD policy.

- 3.2.4 Contractor shall provide pharmaceutical services for prescription and non-prescription medications and all intravenous solutions ordered by the Contractor's physicians, mid-level practitioners, psychiatrists, psych NP's and dentists.
- 3.2.5 Contractor's Nurses shall administer all controlled, abuse-able, and psychotropic medications to Inmates. Medications will be administered through a pill line or cell block distribution process. Nurses or shall administer medications on a regular basis to inmates in segregation. Medications ordered for Hour of Sleep (HS) shall not be administered prior to 8:00PM daily. The NMCD has a keep on person policy, which excludes psychotropic, controlled substances and medications that are abuse-able. Contractor shall establish a renewal procedure for inmates that have KOP medications.
- 3.2.6 Contractor shall include a medication administration record unique to each Inmate who receives medications, to include all information contained on the prescription label and the name of the practitioner who prescribed the medication. Psychotropic medications such as antipsychotics, antidepressants, and drugs requiring parental administration are prescribed only by a physician or authorized health provider by agreement with the physician and then only following a physical examination of the inmate by a qualified health professional. Administration of involuntary psychotropic medications will be in compliance with applicable State laws.
- 3.2.7 Contractor shall administer psychotropic medications in a safe and controlled fashion in accordance with NMCD policies and policy CD-171000 Administration of Psychotropic medications. The Contractor shall conduct monthly Pharmacy and Therapeutic committee meetings at Agency Facilities mutually agreed upon by Agency, Contractor and Pharmacy to discuss medication administration utilization patterns, success or corrections needed, and issues associated with the Formulary, and will involve the Pharmacy and Agency in those committee meetings. While the Contractor has the obligation to develop and implement a formulary of all medications it utilizes, it agrees that it will seek input and recommendations of the Agency and Pharmacy at these monthly meetings or separately if no meeting is scheduled before implementing the formulary, and will also consider the input and recommendations of the Agency and Pharmacy at these monthly meetings regarding any changes to the formulary proposed by the Agency, Pharmacy or Contractor. Contractor also agrees to work collaboratively with Agency and Pharmacy to develop and implement an over the counter (OTC) medications protocol or procedure which would allow Agency inmates to separately purchase OTC medications through inmate commissaries or stores.
- 3.2.8 A statewide Pharmacy and Therapeutics committee meeting will be established and meet quarterly. The meeting will be attended by the Contractor Regional Medical Director, Pharmacy Representative, Psychiatrist, Regional Nurse and a designee or designees of the NMCD.
- 3.2.9 Contractor will provide Inmates being released to the community with at least a four weeks supply of medications provided by the Pharmacy unless at discharge, it is apparent that an exception is necessary.
- 3.2.10 Contractor shall, on its own or in conjunction with the Pharmacy:
 - (a) Maintain up to date patient drug profiles

- (b) Identify drug interactions for all ordered drugs
- (c) Generate a list of inmates on specific drugs by prescribing provider
- (d) Identify and inmate enrolled in a chronic care clinic
- (e) Generate lists of inmates whose medications are within 7 days of expiration.

3.2.11 Contractor shall be responsible for the control, administration and disposal of all pharmaceuticals once it takes custody from the Pharmacy.

3.2.12 Contractor shall provide NMCD with a monthly list of all NMCD inmates released from NMCD custody on psychotropic medications. The Contractor, in conjunction with the Pharmacy, must implement a Continuous Quality Improvement (CQI) Program for the pharmacy program demonstrating a knowledge and focus on outcome measures and measure.

3.2.13 Communication, transparency and cooperation between Contractor and Pharmacy is absolutely essential and of the highest order of materiality. Contractor agrees and warrants that it shall provide absolute cooperation with Pharmacy.

SECTION 4: GENERAL PROVISIONS

4.1 Termination of Pharmacy Subcontract. If the Pharmacy Subcontract is terminated by either Party for any reason, Contractor will notify Agency within two business days of first receipt of written notice of the termination. In the event the Pharmacy Subcontract is terminated, the Parties will work together to find another suitable pharmacy vendor. This Agreement will be amended accordingly to reflect the identity of such new vendor and any change in compensation terms.

4.2 Termination.

4.2.1 If Agency elects to terminate this Agreement, Agency is free to contract directly with a pharmacy vendor, including but not limited to Boswell, for the services outlined in this Agreement.

4.2.2 If the Comprehensive Healthcare Services Agreement is terminated or not renewed by either Party for any reason, then this Agreement shall terminate or expire on the same date. Contractor shall not be obligated to provide services under this Agreement if it not also providing services under the Comprehensive Healthcare Services Agreement. However, this Agreement can terminate or not be renewed by the Parties even though the Comprehensive Healthcare Services Agreement continues in effect.

4.3 Third Party Beneficiary. All Parties agree that the Agency shall be named as an express third-party beneficiary to the Pharmacy Subcontract, with full rights as such.

4.4 Taxes Due to the State. Should the State determine that any or all monies paid by Agency to Contractor under this Agreement or by Contractor to Pharmacy under its subcontract are subject to New Mexico Gross Receipts Tax, Agency agrees that it shall be fully responsible for paying said tax in a timely manner.

ATTACHMENT II
BUDGET

SECTION 1: Reimbursement of Direct Costs and Taxes. The Agency shall reimburse Contractor the full cost of pharmaceuticals at ACC and the full amount equal to the Gross Receipts Taxes paid, if any, related to this Agreement.

SECTION 2: Management Fee.

- 2.1 Year One. For the period of June 1, 2016 to May 31, 2017, the management fee will be \$6.89 per inmate per month plus a flat additional administrative fee of \$30,000 per month.
- 2.2 Year Two. For the period of June 1, 2017 to May 31, 2018, the management fee will be \$7.05 per inmate per month plus a flat additional administrative fee of \$30,000 per month.
- 2.3 Year Three. For the period of June 1, 2018 to May 31, 2019, the management fee will be \$7.21 per inmate per month plus a flat additional administrative fee of \$30,000 per month.
- 2.4 Year Four. For the period of June 1, 2019 to May 31, 2020, the management fee will be \$7.38 per inmate per month plus a flat additional administrative fee of \$30,000 per month.

SECTION 3: Cost Reduction Initiatives. Contractor will assign one or more corporate pharmacists to provide direct oversight of this Agreement and work with the Pharmacy. Contractor will use our other pharmacists and pharmaceutical analysts to provide detailed prescriber reports and provide expertise in psychopharmacology, implementation of a revised over-the-counter medication program, HIV, and Hepatitis C treatment, review drug therapy, and attend on site Provider meetings. By providing on- site, face-to-face education on prescribing practices, pharmacotherapy and evidence- based practices, Contractor will assist Agency to be proactive in managing medication costs, ensuring best available medication price and utilization and improving care.