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35. The State shall develop and implement mental health services and programs that address the serious mental health needs of detainees. The State shall develop policies, procedures, and protocols that define and describe how OCCC shall develop and deliver mental health programs and services that comport with generally accepted professional correctional standards. Accordingly, the State shall:

- a. develop and implement individualized treatment plans that adequately address each detainee's serious mental health needs;
- b. develop and implement an adequate range of mental health services to address the serious mental health needs of detainees; and,
- c. transfer in a timely manner any detainee requiring an intensity of mental health treatment not available at OCCC, to a facility adequate to meet the detainee's needs.

36. The State shall employ an adequate number of mental health professionals, including psychiatrists, psychologists, nurses, psychiatric social workers, and counselors to meet adequately the needs of detainees at OCCC with serious mental illness. The details of this provision are discussed and agreed to in a letter between the parties.

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37. The State shall employ the clinical leadership to direct and supervise the provision of mental health services for seriously mentally ill detainees at OCCC to comport with generally accepted professional correctional standards of practice, as follows:

- a. One on-site Director; and,
- b. One Assistant Director (QMHP).

38. The State shall employ an adequate number of correctional staff on duty so that mental health services for seriously mentally ill detainees are not negatively impacted by the lack of correctional staff to provide security and supervision of seriously mentally ill detainees.

39. The State shall implement and document a continuous quality assurance program for mental health services at OCCC.

#### **IV. IMPLEMENTATION OF THE SETTLEMENT AGREEMENT**

40. Except where otherwise specifically indicated, the State shall substantially comply with each and every provision of this Settlement Agreement within thirty (30) months of its effective date.

41. For the purposes of this Settlement Agreement, "provision" shall be defined as each complete Paragraph of Section III of the Settlement Agreement (e.g., Section III.(32) (subparagraphs a-I)). Sub-paragraphs are not severable.

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42. Within one (1) month of the effective date of this Settlement Agreement, the State shall communicate to OCCC employees, and any independent contractors involved in providing detainees treatment, of the requirements set forth in this Settlement Agreement that are applicable to their respective job duties.

43. Within two (2) months from the effective date of this Settlement Agreement the State shall prepare and submit to the DOJ a comprehensive action plan ("Action Plan") specifying the measures the State intends to take in order to bring OCCC into compliance with the substantive requirements of Section III of this Settlement Agreement, including anticipated timeframes for completion of each measure.

44. The parties have jointly selected Russell Van Vleet to serve as the monitor ("Monitor") for this Settlement Agreement. Should the position become vacant and the parties cannot agree on a replacement, the parties shall recommend candidates to the Court, and the Court will select the Monitor. Neither party, nor any employee or agent of either party, shall have any supervisory authority over the Monitor's activities, reports, findings, or recommendations. The cost for the Monitor's fees and expenses shall be borne by the State. The State will apply to the Chief Procurement Officer for an exemption from the state procurement code to retain the Monitor. The Monitor may be terminated only

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for good cause, unrelated to the Monitor's findings or recommendations, and only with prior notice to and approval of both parties or by Court order. Should either party develop concerns that the Monitor is not adequately performing his responsibilities set forth in this Agreement, the parties agree to engage in good-faith discussions toward resolution of any such concerns. Should the parties decide that it is appropriate to replace the Monitor, the parties will mutually select a new Monitor, and work together in good faith to reach a satisfactory contract with the replacement Monitor.

45. The State shall pay the salary, costs, and expenses associated with the Monitor, and, if needed, shall provide sufficient funds to permit the Monitor to hire staff and consultants to assist in carrying out the Monitor's duties and responsibilities under the Settlement Agreement. The DOJ does not object to the State imposing a definitive fee structure for payments associated with the Monitor.

- a. The Monitor shall serve as the liaison between OCCC, the State, and the DOJ regarding compliance with this Settlement Agreement. The Monitor's exclusive duties are to oversee and promote implementation of the provisions of the Settlement Agreement.
- b. Specifically, the Monitor's duties shall include, but not be limited to:

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1. Monitoring and facilitating the State's compliance with each of the provisions in this Settlement Agreement;
2. Preparing reports every four (4) months for the parties regarding compliance with each provision of the Settlement Agreement;
3. Facilitating meetings between the parties on a regular and periodic basis to update the parties regarding compliance with the Settlement Agreement, including areas of improvement and areas of concern; and,
4. Providing to the parties any relevant information known, or available to the Monitor, under any provision of the Settlement Agreement upon reasonable request.

c. The Monitor shall be permitted to initiate and receive ex parte communications with the parties regarding any matter related to this Settlement Agreement.

46. The Monitor shall have full and complete access to the OCCC facilities, records, staff, and detainees. The State shall direct all employees to cooperate fully with the Monitor. All non-public information obtained by the Monitor shall be maintained in a confidential manner.

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47. Except as required or authorized by the terms of this Settlement Agreement or the parties acting together, the Monitor shall not: make any public statements (at a conference or otherwise); issue findings with regard to any act or omission of the State or its agents, representatives or employees; or disclose non-public information provided to the Monitor pursuant to this Agreement. Any press statement made by the Monitor regarding his employment must first be approved by the parties.

48. Other than this Lawsuit as between the United States and the State, the Monitor shall not testify in any litigation or proceeding with regard to any act or omission of the State, OCCC or any of their agents, representatives, or employees, nor testify regarding any matter or subject that he or she may have learned as a result of his or her performance under this Settlement Agreement. In this Lawsuit as between the United States and the State, either party may call the Monitor as a witness. Neither party will call the Monitor as their own expert or designate the Monitor as their own expert pursuant to the federal rules of civil procedure. The scope and purpose of the Monitor's testimony shall be left to the discretion of the Court.

49. Other than this Lawsuit as between the United States and the State, reports issued by the Monitor shall not be admissible against the State in any proceeding for any reason. In this Lawsuit as between the United States and the State, the

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admissibility into evidence of the Monitor's reports, or portions thereof, shall be governed by the federal rules of evidence, and the parties reserve all rights to either seek admissibility or object to admissibility of those reports. The Monitor is not a state or local agency or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records subject to public inspection. In the event of a proceeding before a court, in which the court needs to determine whether or not the Monitor has performed any contracts or subcontracts for monitoring this Settlement Agreement, such testimony as is necessary for the determination of such issue(s) may be allowed, in the discretion of the court, notwithstanding this paragraph.

50. Unless such conflict is waived by the parties, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Settlement Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the State or its departments, officers, agents or employees. Nothing in this Settlement Agreement shall prohibit the DOJ from employing the Monitor in matters not involving the State of Hawaii.