

SAMPLE

CONTRACT

This contract (the "Contract") entered into this _____ day of _____, 2011, and between SHELBY COUNTY GOVERNMENT, hereinafter referred to as "COUNTY" and _____, hereinafter referred to as "PROVIDER".

WITNESSETH

WHEREAS, the COUNTY has the need for the provision of inmate medical services (including but not limited to medical, pharmaceutical, dental, psychiatric services, health care personnel and program support services) for a population of inmates at the Shelby County Jail, (includes main Jail at 201 Poplar and Jail East at Shelby Farms hereinafter collectively "Jail",) and the Shelby County Corrections Center, hereinafter "SCDOC" or "Corrections Center" located at or about 1045 Mullins Station Road including but not limited to N-Building (e.g. West Tennessee Regional Re-entry Center) and the Adult Offender Center ("AOC"). Each facility shall be individually known as the "Facility" and collectively known as the "Facilities"; and

WHEREAS, the COUNTY issued a Request for Proposals ("RFP") Number _____ Inmate Medical Services on _____, and PROVIDER responded to said RFP on _____; and

WHEREAS, the PROVIDER has the knowledge and expertise to provide such services; and

WHEREAS, the COUNTY awarded the RFP to PROVIDER on _____; and

WHEREAS, the parties are desirous of entering into a contract setting forth the terms and conditions under which the PROVIDER will provide said services.

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NOW THEREFORE, for and in consideration of the above premises, mutual promises, agreements and covenants herein contained, and for other good and valuable consideration the parties acknowledge to be sufficient, the parties hereto intending to be legally bound agree as follows:

I. SCOPE OF WORK

1. The PROVIDER shall provide the services as requested by the COUNTY and as outlined within the COUNTY's RFP Number _____, Inmate Medical Services and PROVIDER's response and all amendments/addendums thereto which is attached hereto as Exhibit "A" and incorporated herein by reference as if stated verbatim (the "Services") which are attached hereto and incorporated fully herein by reference. Exhibit A comprises both RFP and PROVIDER's original response, should the response conflict with any section of this Contract, the language contained in this Contract, and then the RFP shall control.
2. Should the COUNTY request or initiate a change in the scope of Services or how those Services are rendered, and if that requested change will require additional staff or otherwise increase Provider's cost, the parties will renegotiate the Contract compensation accordingly. Any such change in the Service requirements will require a written amendment executed by both parties.

II. TERM AND COMPENSATION

1. The term of this Contract (the "Term") will commence on July 1, 2013 and continue through June 30, 2014. This Contract may be renewed for four (4) consecutive one-year periods upon the mutual written agreement of the parties. The COUNTY agrees to compensate the Provider for the provision of the Services, in an amount not to exceed the Provider's Annual Fee as set forth below ("Fee").

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2. The Fee shall be payable in twelve (12) equal monthly installments commencing on July 15, 2011 and payable on the fifteenth day of each succeeding calendar month. The amount of the fee will be dependent on the Average Daily Population, as customarily determined by the Facility (ADP) for a calendar month as set forth below. For each renewal year, the Fee may be subject to an increase not to exceed 3.0% of the Fee for the immediately preceding year as agreed to by the parties.

Jail	Annual Fee
(a) ADP 2601-3000 (b) ADP 3000-3300	
Corrections Center (a) ADP 2500-3000 (b) ADP 3001-3300	
Total Combined (a) Combined (b)	

3. Contractors shall not be permitted or authorized to incur costs to the COUNTY beyond the extent that purchase orders have been issued on approved contracts and/or purchases prior to the commencement date, during the term of the Contract, and/or subsequent to the termination date of COUNTY contracts or purchases without prior, expressly written, appropriate authorization pursuant to COUNTY purchasing procedures and rules and regulations. COUNTY is not obligated to pay nor shall Contractor be entitled to receive payments for contract fees and expenses incurred in violation of this provision

III. QUALITY MANAGEMENT AND REVIEW.

1. The provision of health care services by the PROVIDER will be

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monitored to assure the PROVIDER abides by the contractual agreements made herein. PROVIDER may be subject to fines or penalties as set forth herein for failing to comply with the terms of this Contract and/or for failing to timely provide or implement a Corrective Action Plan. All said fine and penalties assessed upon and to be paid by PROVIDER, if any, are to be paid by the PROVIDER to COUNTY within 30 days from date of assessment with such monies being held in escrow by the COUNTY, subject to the dispute resolution provisions set forth herein. Should such monies to be paid to the COUNTY by PROVIDER and to be held in escrow not be timely paid to and received by the COUNTY, the COUNTY at its discretion may deduct such fines and penalties, from any compensation, fees or other monies to be paid by the COUNTY to PROVIDER. A particular fine or penalty or accumulation of any fines or penalties, assessed upon PROVIDER is not an exclusive remedy and shall not prohibit the COUNTY from pursuing all other remedies as allowed by law or otherwise authorized by this Contract. The failure of the COUNTY to assess any fine, penalty, sanction or damage and/or the failure of the PROVIDER to pay same shall not in any way prohibit the COUNTY from assessing or the PROVIDER paying any fines, penalties, sanctions or damages for future occurrences.

2. Medical Services Review Team. The COUNTY shall assign a Quality Management Coordinator and/or a Contract Monitor (hereinafter "Contract Monitor") who will monitor performance and contract compliance of Provider. Contract Monitor will identify contract performance deficiencies for each Facility and report any such contract deficiencies to the Medical Services Review Team ("MSRT"), an interdisciplinary, collaborative committee comprised of leadership from the Shelby County Health Department (SCHD), Provider, the Sheriff's Office, and the Shelby County Division of Corrections, at regular meetings scheduled by the COUNTY. It shall be mandatory for PROVIDER to attend any scheduled MSRT meeting for each/either Facility. As requested by the MSRT, Provider shall develop a corrective action plan (hereinafter "Corrective Action Plan" or "CAP") for specific deficiencies as identified at MSRT meetings, and the COUNTY shall review each such plan prior to its implementation. If the Corrective Action Plan meets the specified objective, the Contract Monitor will approve said Corrective Action

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Plan for implementation. The Corrective Action Plan must be developed and submitted to the COUNTY within ten (10) business days after the MSRT meeting. Notwithstanding the foregoing, if time is of the essence, as determined by the COUNTY, the COUNTY will advise the Provider, and then the Corrective Action Plan must be submitted to the COUNTY within forty-eight (48) hours and immediately implemented upon approval by the COUNTY. PROVIDER's failure to comply with the Corrective Action Plan may result in penalties as identified in Section IV. 1. below.

3. Performance Guarantees. For certain defined services as identified in Exhibit B attached and incorporated herein, failure to meet the required level of service and correct the non-performance in accordance with the Corrective Action Plan may result in the assessment of monetary fines and penalties by the COUNTY to the PROVIDER. Charges may be assessed in the applicable amount designated in Exhibit B, only after written notice of deficiency to the Provider, and after PROVIDER has had an opportunity to cure such deficiency pursuant to the Corrective Action Plan in accordance with Section III, subsection 2. above
4. Quality Improvement Plan. Provider will develop and implement, with the cooperation and approval of the COUNTY, a mutually satisfactory quality improvement plan, hereinafter "Quality Improvement Plan", to monitor critical indicators of quality healthcare service. The Quality Improvement Plan measure should include at a minimum, documented compliance with Established Standards as that term is used herein below (Section IV.); COUNTY audits of Provider medical records reviews; reviews of inmate sick call slips; reviews of medically-related grievances filed by inmates; and the timeliness of medical assessments to detect and respond to chronic conditions and transmittable diseases, such as tuberculosis, HIV, MRSA and STDs.
5. Quality Improvement Committee Reviews. The PROVIDER shall in good faith fully participate in Quality Improvement Committee Reviews which include, but are not limited to critical incident, mortality, and sentinel event reviews. The PROVIDER shall make timely any full disclosure to the COUNTY of all facts, matters, information and documentation concerning the pertinent incident or event. The PROVIDER shall on a timely basis make available to the

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COUNTY for interview all PROVIDER personnel having knowledge of the incident or event.

The parties consider Quality Improvement Reviews confidential and not subject to public disclosure. Both parties will subject to the paragraph immediately above conduct their actions, policies and processes related to such reviews in such a way as to afford the maximum protection from disclosure afforded under applicable law. Neither party will willingly nor voluntarily publicly disclose information pertaining to or arising from a Quality Improvement Committee Review. Each party shall take all reasonable action at its own cost to defend the position of non-disclosure of such information.

IV. **STANDARDS, REQUIREMENTS AND ACCREDITATION.**

1. **Failure to Comply With Established Standards.** The COUNTY may conduct an audit or inquiry of PROVIDER's performance and/or compliance with Established Standards, monthly, quarterly, or at any time it determines within its discretion to be appropriate. Should a deficiency of medical services versus Established Standards be identified, a Corrective Action Plan to be approved by the Contract Monitors will be requested by the MSRT. Should PROVIDER not timely provide and/or implement the Corrective Action Plan, PROVIDER will be given written notice by COUNTY of these deficiencies. PROVIDER shall then become compliant with the terms of the specific Corrective Action Plan, or, if not, may be assessed and pay a \$700 per week penalty (pro-rated daily) until compliance with the Corrective Action Plan is met. Established Standards ("Established Standards" or "established standards") for purposes of this provision are set forth below:
 - (a) For the Jail including Jail East, it is required that quality healthcare services be provided in compliance with the standards established by all applicable federal, state and local laws, rules and regulations, including but not limited to Jail (including Jail East) policy and procedures; COUNTY policy and procedures; Tennessee Department of Health Standards; the Tennessee Minimum Jail Standards; the 2002 Department of Justice (DOJ) Settlement Agreement and Department Of

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Justice mandates; the National Commission on Correctional Health Care (“NCCHC”) Standards for Health Services in Jails; the American Correctional Association (“ACA”) Standards for Adult Local Detention Facilities; Occupational Safety and Health Administration (“OSHA”) Regulations; Americans with Disabilities Act (“ADA”); Environmental Health Regulations; Pharmacy Law and Regulations; Laboratory Regulations; and SCHD Audit Tool Addendums.

- (b) For the Corrections Center, it is required that PROVIDER provide all health care services in compliance with Corrections Center policies and procedures, COUNTY policy and procedures, Tennessee Corrections Institute (“TCI”), ACA Standards for Adult Local Detention Facilities (if applicable), OSHA, ADA, Environmental Health Regulations, Pharmacy Law and Regulation, Laboratory Regulations, and SCHD Audit Tool Addendums.

- 2. **Loss of Accreditation.** If any existing NCCHC or ACA Accreditation or DOJ compliance held by any Facility is lost due to, or arising from, the acts or omissions of the PROVIDER, the PROVIDER shall be assessed a fine of and shall pay to the COUNTY \$250,000.00 for each 12-month period or any part thereof until said Accreditation is fully resumed. To incentivize the PROVIDER to take those actions necessary to fully resume Accreditation or compliance at the earliest possibility, the COUNTY shall reimburse PROVIDER \$20,000.00 for each full 30 day period prior to the 365th day subsequent to actual loss of Accreditation or compliance, that the Accreditation or compliance is fully resumed.

V. **PHARMACEUTICAL REQUIREMENTS.**

- 1. All prescription and non-prescription medication, medical supplies, medical forms, office supplies, medical records, books, periodicals, uniforms and lab coats will be the responsibility of the PROVIDER with the exception of HIV/AIDS medications and TB medications, it being understood by the parties that the PROVIDER shall not be responsible for the costs of such HIV/AIDS, TB medications. At the time of Contract execution, the HIV/AIDS medications are provided

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by the MED pharmacy, and the TB medications are provided by the Shelby County Health Department pursuant and subject to a State program funding same. Provider will coordinate the acquisition of HIV/AIDS and TB medications through the health department so long as they are available. The PROVIDER shall ensure availability of prescribed medications as specified by physician, to timely satisfy emergency needs of inmate population. All medications must be ordered in a systematic manner by an appropriate practitioner and records of administration must be maintained, including but not limited to documentation of any missed doses of medication. The PROVIDER shall maintain an effective Keep On Person (“KOP”) process whereby designated inmates are allowed to keep approved prescribed medicines secured in their possession for self administration. Pharmaceutical services shall be in compliance with Federal and State regulations and shall be monitored by a licensed and qualified pharmacist.

2. **Formulary.** Medication and prescription ordering will be based on PROVIDER’s formulary which must be approved in writing by the COUNTY and be consistent with the TennCare formulary as recommended by the State of Tennessee and practices of the Memphis and Shelby County medical community as reasonably determined by the COUNTY. The PROVIDER shall within 30 days of the date of this Contract submit to the COUNTY the PROVIDER’s formulary. The COUNTY shall within 30 days of receipt of said written formulary approve or not approve same. Should the COUNTY not approve same it shall in writing and in detail set forth the reasons for not approving same. In such case, the PROVIDER shall resubmit the written formulary to the COUNTY within 15 days and the COUNTY shall have 15 days to approve or not approve same. Should the COUNTY not approve same, the approval process shall be as set forth above with each party having only 7 days to respond to the other in writing until the formulary is approved. Changes to the formulary will require written approval by the COUNTY.
3. **Disposal of Pharmaceuticals.** The method of prescribing and disposing of pharmaceuticals must be detailed in a written procedure approved in writing by the COUNTY. The PROVIDER shall within 30 days of the date of this Contract submit to the COUNTY the PROVIDER’s written procedure of prescribing and disposing of

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pharmaceuticals. The COUNTY shall within 30 days of receipt of said written policy approve or not approve same. Should the COUNTY not approve same it shall in writing and in detail set forth the reasons for not approving same. In such case, the PROVIDER shall resubmit the written policy to the COUNTY within 15 days and the COUNTY shall have 15 days to approve or not approve same. Should the COUNTY not approve same, the approval process shall be as set forth above with each party having only 7 days to respond to the other in writing until the policy is approved. The procedure shall be subject to monthly review and audit by the COUNTY.

4. **Chronic Care Medications.** Chronic care medications should be stocked in the Facility Pharmacies in sufficient quantities to provide immediate medication for patients with common chronic diseases to prevent unnecessary hospitalization or medical treatment attributable to delays in receiving prescribed drugs. Common chronic conditions include, but are not limited to, hypertension, diabetes, asthma, hypercholesterolemia and seizure disorders. Unless medical necessity dictates otherwise, generic medications are preferred. Mutually acceptable policies and procedures regarding Chronic Care Medications will be developed by the PROVIDER and agreed upon in writing by the COUNTY. The PROVIDER shall within 30 days of the date of this Contract submit to the COUNTY the PROVIDER's written policies procedures regarding Chronic Care Medications. The COUNTY shall within 30 days of receipt of said written policy and procedure approves or not approves same. Should the COUNTY not approve same it shall in writing and in detail set forth the reasons for not approving same. In such case, the PROVIDER shall resubmit the written policy and procedures to the COUNTY within 15 days and the COUNTY shall have 15 days to approve or not approve same. Should the COUNTY not approve same, the approval process shall be as set forth above with each party having only 7 days to respond to the other in writing until the policies and procedures are approved. Such policies and procedures will be reviewed and modified as agreed upon by both parties in writing annually by June 30.

VI. **STAFFING REQUIREMENTS AND DOCUMENT MANAGEMENT.**

1. **Ownership and Access to Documentation.** All inmates must have a

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medical record that is kept up to date at all times, and which complies with problem oriented medical record format and standards, All medical records prepared pursuant to this Contract or otherwise shall be the property of COUNTY but shall be maintained at all times at the Facility unless a lawful subpoena states otherwise. All medical records shall be maintained in the sole possession, custody and control of PROVIDER while an inmate is in COUNTY's custody. The PROVIDER shall not deny to COUNTY or its lawful designee prompt access to such records for examination and photocopying. The PROVIDER shall maintain all medical records for inmates released from custody until the termination or expiration of this Contract. At the end of the Term of this Contract, PROVIDER shall arrange for the prompt transfer of all medical and related records to the COUNTY. The PROVIDER shall fully cooperate in the transfer of such records to any subsequent provider for the COUNTY at no additional cost to the COUNTY. The PROVIDER's transfer of custody shall be done in compliance with medically acceptable practice and procedure, in compliance with all applicable laws, and at no additional cost to the COUNTY. PROVIDER further agrees to utilize any electronic medical record system owned or acquired by the COUNTY.

2. **Staffing.** The PROVIDER shall provide qualified and adequate health care personnel as required twenty-four (24) hours a day, seven (7) days a week, including holidays and weekends, to provide those services expressed in and contemplated by the RFP. and this Contract for each Facility as stipulated in Exhibit C. COUNTY shall have access upon request to any existing documentation of staffing schedules or reports. After the term or termination of this Contract and for a period of at least three (3) years thereafter, COUNTY shall have reasonable and prompt access to such records as may be necessary in connection with (i) COUNTY's defense of or response to any claim related thereto, (ii) any dispute or potential dispute hereunder, or (iii) any other legitimate business purpose that is mutually agreed upon in writing by both Parties. Failure to comply with the provisions of this section may result in a Corrective Action Plan.
3. **Additional Staffing Requirements.** The Provider shall make reasonable inquiry and conduct reasonable due diligence to assure that it does not engage staff, subcontractors and others in violation of the prohibitions and restrictions set forth and contemplated herein.

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- a. The PROVIDER shall not permit staff to display favoritism to, or preferential treatment of, one inmate or group of inmates over another.
- b. The PROVIDER shall not permit staff to interact with any inmate except in a relationship that will support the approved goals of the Contract. Specifically, staff members shall never accept for themselves or any member of their family, any personal (tangible or non-tangible) gift, favor or service, from an inmate or from an inmate's family or close associate, no matter how trivial the gift or service may seem. All staff shall be required to report to the COUNTY AND Contract Monitor or their designee any violations of these restrictions. In addition, no staff shall give any gifts, favors or services to inmates, their family or close associates.
- c. The PROVIDER shall not permit staff to enter into any business relationship with inmates or their families (e.g., selling, buying or trading personal property), or personally employ them in any capacity.
- d. The PROVIDER shall not permit staff to have outside contact with an inmate, their family or close associates, except for those activities that are to be rendered under and pursuant to this Contract.
- e. The PROVIDER shall not permit staff to engage in any conduct which is criminal in nature or which would bring discredit upon the PROVIDER or the COUNTY. In providing services pursuant to this Contract, the PROVIDER shall ensure that his/her employees avoid both misconduct and the appearance of misconduct.
- f. Any known violation or attempted violation of the restrictions referred to in this section regarding employee conduct shall be promptly reported by phone and in writing to the COUNTY, Shift Commander and the Contract Monitor, including proposed action to be taken by the PROVIDER within twenty-four (24) hours of the PROVIDER's knowledge of said

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violation or attempted violation. Any failure to report a known violation or failure to take appropriate disciplinary action against the offending party or parties shall subject the PROVIDER to appropriate action including but not limited to termination of this Contract.

- g. The PROVIDER shall promptly report any incident referred to in this section requiring investigation by the PROVIDER in writing to the COUNTY, Shift Commander and Contract Monitor prior to end of shift on which PROVIDER is made aware of incident.
- h. No employee who is known to have been barred from employment by any Shelby County or State of Tennessee institution or other facility shall be considered for employment or employed at a COUNTY contracted facility. Accordingly, no such person shall be employed by the Provider to render any service at a Facility.
- i. The PROVIDER shall not employ any individual who is a convicted felon or who is known to be under supervision or jurisdiction of any parole, probation or correctional authority to render any service pursuant to this Contract or at any COUNTY facility or site. Persons under any such supervision or who may be a convicted felon may work for other elements of the PROVIDER's agency that do not in any way whatsoever concern and/or arise from this Contract. The objective of this provision is to ensure that no employee of the PROVIDER under any such constraint has contact with or access to any Tennessee Department of Corrections ("TDOC") inmate sentenced in a COUNTY Facility or the records of any such inmate.
- j. The PROVIDER shall disclose any known business or personal relationship a PROVIDER staff person, officer, agent or potential hire may have with anyone presently incarcerated or under the supervision of the COUNTY or TDOC.
- k. The PROVIDER shall require employees to immediately report any new arrest, criminal charges or convictions and shall inform

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the COUNTY Facility management and the Contract Monitor accordingly.

- l. The PROVIDER shall not assign personnel to the Contract who are known convicted felons.
- m. Personnel files on all PROVIDER personnel, including temporary and contracted personnel who render services in any way whatsoever concerning or arising from this Contract shall be on file with the healthcare unit of the PROVIDER. The records shall be made promptly available to the COUNTY, Contract Monitor and any appropriate COUNTY employee or designee. These files shall include, but not be limited to, copies of current Tennessee professional licenses or proof of professional credentials or certification, and evaluation records and position responsibilities.
- n. The PROVIDER shall provide its physicians with a beeper/pager service or other means of contact acceptable to COUNTY so that they may be contacted while off-site.
- o. The PROVIDER shall notify in writing and consult with the COUNTY or designee and the Director of Health Services or designee prior to discharging, removing or failing to renew the contracts of any professional staff.
- p. The PROVIDER and its personnel shall be subject to and shall comply with all security regulations and procedures of the COUNTY and the Facility. Violation of regulations may result in the employee or individual being denied access to the Facility. In this event, the PROVIDER shall provide alternate personnel to supply services described herein, subject to COUNTY approval. The COUNTY may within its discretion prohibit any PROVIDER personnel from entering a Facility. Should the COUNTY take such action, the COUNTY shall inform the PROVIDER of the reasons for doing same.
- q. The PROVIDER shall distribute a written job description to each member of the healthcare staff that clearly delineates his/her assigned responsibilities. The PROVIDER shall monitor

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performance of healthcare staff to ensure adequate job performance in accordance with these job descriptions and other provisions of the Contract.

- r. Notwithstanding any other provision in this Contract, Provider will not be required to share, release or disclose documentation or information in violation of any attorney-client privilege.

VII. GENERAL CONDITIONS. The parties further agree as follows:

1. Control. All Services by the PROVIDER will be performed in accordance with the generally accepted business practices and procedures of the COUNTY and the established standards are disclosed herein above.
2. Provider's Personnel. The PROVIDER certifies that it will employ adequate qualified personnel to perform all services required under this Contract. All Services performed pursuant to this Contract will be supervised by the PROVIDER. The PROVIDER further certifies that all of its employees assigned to serve the COUNTY have such knowledge, credentials, expertise, licensure and experience as required to perform the duties assigned to them and as required by this Contract. Any employee of the PROVIDER who, in the determination of the COUNTY, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the services under this Contract. COUNTY shall have input and approval of the following positions: Medical Director; Health Services Director; Director of Nursing; Psychiatry Director; medical psychiatry and dental provider; Quality Control Nurse; and Infection Control Nurse.
3. Independent Status.
 - a. Nothing in this Contract shall be deemed to represent that the PROVIDER, or any of the PROVIDER's employees or agents, are the agents, representatives, or employees of the COUNTY. The PROVIDER will be an independent PROVIDER over the details and means for performing the services under this Contract. Anything in this Contract which may appear to give

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the COUNTY the right to direct the PROVIDER as to the details of the performance of the services under this Contract or to exercise a measure of control over the PROVIDER is solely for purposes of compliance with local, state and federal regulations and means that the PROVIDER will follow the desires of the COUNTY only as to the intended results of the scope of this Contract. The COUNTY further agrees and acknowledges that it will not intentionally practice medicine in violation of TCA Sections 63-6-201(a).

- b. It is further expressly agreed and understood by PROVIDER that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the COUNTY; that PROVIDER has been retained by the COUNTY to perform the services specified herein (not hired) and that the remuneration specified herein is considered fees for the services performed (not wages) and that invoices submitted to the COUNTY by PROVIDER for the services performed shall be on the PROVIDER's letterhead.

- 4. Reports. PROVIDER shall in addition to any other writings or documents referred to herein, prepare and electronically submit monthly and weekly reports of its activities, funded under this Contract, to the Health Department and the Contract Administration Department of the COUNTY. The monthly reports shall include but not be limited to actual vs. contracted staffing level reports. The weekly reports should be inclusive of specific services delivered, including but not limited to the number of inmates screened, the number of inmates screened for infectious diseases and positive results, and the number of inmates receiving physicals and the number of sick call encounters. The reports should also include any other clinical information requested by the COUNTY concerning the delivery of medical services in Shelby County, Tennessee. Any such reports provided to the COUNTY shall be prepared with the understanding that contrary to a party's desire to keep said document confidential that said document may be subject to public disclosure by the COUNTY under the Tennessee Open Records Act or other law. All PROVIDER reports and documentation regarding or arising from the services rendered pursuant to this Contract and which are specific to the work performed in accordance with this Contract may be

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subject to examination, review and audit by the COUNTY. The COUNTY shall have the right to withhold future payment of funds under this Contract until this provision has been met.

5. Clinic Equipment. The COUNTY and PROVIDER agree that PROVIDER will bear all costs up to \$10,000.00 for each Facility (Jail including Jail East as one facility and Corrections Center as the other facility) annually to select, purchase, install and maintain any additional clinic equipment, and to maintain all existing equipment, unless otherwise specified, required for the delivery of health care services. All such purchases will immediately become the property of COUNTY, and will remain the property of COUNTY should the Contract be terminated. Provider shall expense such equipment at time of acquisition.

The COUNTY and PROVIDER agree that equipment shall be defined to be any asset, or group of like assets, with an acquisition cost in excess of \$500.00 and a useful life in excess of one year.

6. Termination or Abandonment.
 - a. It shall be cause for the immediate termination of this Contract if, after its execution, the COUNTY determines that:
 - i. The PROVIDER or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has pled nolo contendere, or has pled or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting;
 - ii. PROVIDER has subcontracted this Contract in a manner contrary to the parties' intentions set forth at subparagraph 7. b. (ii) below , assigned, delegated, transferred its rights, obligations or interests under this Contract without the COUNTY's consent or approval; or
 - iii. PROVIDER has filed bankruptcy, become insolvent or

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made an assignment for the benefit of creditors, or a receiver, or similar officer has been appointed to take charge of all or part of PROVIDER assets. Furthermore, The PROVIDER shall immediately inform the COUNTY in writing of its becoming insolvent or seeking bankruptcy protection.

- b. Either party has the right to terminate the Contract upon thirty (30) days written notice to the other party for that party's material breach of the contract unless the party cures the breach within said 30 day period. For purposes of this provision regarding termination and the claim of breach of contract by PROVIDER for the COUNTY's failure to pay compensation due PROVIDER, the payment by COUNTY of any money allegedly due PROVIDER into a Court of law for further determination by the Court, shall serve to void PROVIDER's right to terminate the Contract for breach of contract arising from the COUNTY's failure to make payment. In the event of such termination, the PROVIDER shall be entitled to receive compensation for any work performed prior to and as of the termination date subject to the PROVIDER having delivered to the COUNTY and the COUNTY having received such statements, documents, reports, data and other materials reasonably requested by the COUNTY or as required by this Contract and the PROVIDER owing no monies to the COUNTY under this Contract.
- c. The Contract may be terminated by either party by giving one hundred and twenty (120) days written notice to the other before the effective date of the termination. In the event of such termination, the PROVIDER shall be entitled to receive compensation for any work performed prior to and as of the termination date subject to the PROVIDER having delivered to the COUNTY and the COUNTY having received such statements, documents, reports, data and other materials reasonably requested by the COUNTY or as required by this Contract and the PROVIDER owing no monies to the COUNTY under this Contract.
- d. The rights and remedies of either party under these termination

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provisions shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

- e. Notwithstanding the above or any section herein to the contrary, PROVIDER shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the Contract by PROVIDER and the COUNTY may withhold any payments to PROVIDER for the purpose of setoff until such time as the exact amount of damages due the COUNTY from PROVIDER is determined.
- f. Subject To Funding. This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the Term hereof, then this Contract will be terminated. In the event of such termination, the PROVIDER shall be entitled to receive compensation for any work performed prior to and as of the termination date subject to the PROVIDER having delivered to the COUNTY and the COUNTY having received such statements, documents, reports, data and other materials reasonably requested by the COUNTY or as required by this Contract and the PROVIDER owing no monies to the COUNTY under this Contract. Availability of funds shall be determined at the sole discretion of the COUNTY by giving ninety (90) days written notice to the PROVIDER.
- g. In the event a Facility is damaged by fire or other casualty and that as of result of such casualty a threat is posed to the safety, health or security of the inmates, staff and/or public, the COUNTY shall have the right to terminate the Contract, upon notice and without penalty. The PROVIDER shall be entitled in such event to receive compensation for any work performed prior to and as of the termination date subject to the PROVIDER having delivered to the COUNTY and the COUNTY having received such statements, documents, reports, data and other materials reasonably requested by the COUNTY or as required by this Contract and the PROVIDER owing no monies to the COUNTY under this Contract.

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- i. Upon delivery by certified mail to PROVIDER of a Notice Of Termination specifying the nature of the termination, and the date upon such termination becomes effective, the PROVIDER shall do all things reasonably possible to terminate its services in a cost effective manner, and to operate and manage the provision of health care services safely, efficiently, in compliance with the Contract and in utmost cooperation with the COUNTY.

7. Subcontracting, Assignment Or Transfer.

- a. The PROVIDER will give full attention to the faithful execution of the Contract, will keep the contract under its control, and will not by power of attorney or otherwise assign the Contract or delegate its duties hereunder to any other party.
- b.
 - (i) Any subcontracting (except as specifically and expressly required by applicable corporate practice of medicine laws), assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party. No subcontracting, assignment, delegation or transfer shall relieve the PROVIDER from performance of its duties and obligations under this Contract. The COUNTY shall not be responsible for the fulfillment of the PROVIDER's obligations to its transferors or subcontractors. Merger or consolidation of the COUNTY with any other municipality or municipalities shall not be considered an assignment, delegation or transfer of this Contract.
 - (ii) The Parties hereto acknowledge and understand that certain services to be provided by PROVIDER under this Contract may only be provided by a person or entity (e.g., a professional corporation) holding a particular license, certificate or qualification. Accordingly, the PROVIDER may employ, hire, subcontract or otherwise engage an entity or person duly licensed, certified or qualified. Said employment, hire, subcontract, or engagement shall not be a breach of this Contract, nor shall it cause a termination of the Contract. Notwithstanding any other provision in this Contract, the

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employment, hiring, subcontract or engagement of a licensed, certified or qualified person or entity shall not in any way whatsoever be interpreted or construed as to release, forgive, and/or discharge PROVIDER from any liability, obligation or duty otherwise had by PROVIDER in or as contemplated by this Contract

- c. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the subcontract, assignment, delegation or transfer.

8. Conflict Of Interest. The PROVIDER covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of its services. The PROVIDER warrants that no part of the total Contract amount provided herein shall be paid directly or indirectly to any officer or employee of the COUNTY as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to the PROVIDER in connection with any work contemplated or performed relative to this Contract.

9. Contingent Fees. The PROVIDER warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the PROVIDER, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the PROVIDER any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the COUNTY will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

10. Employment Of County Workers.

- a. The PROVIDER will after reasonable due diligence and inquiry not knowingly engage, on a full, part-time, or any other basis during the Term of the Contract, any professional or technical personnel who are employed by the COUNTY or have been in the employ of the COUNTY within the 12 months preceding

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the date of this Contract. The PROVIDER shall immediately terminate said engagement upon becoming aware of said County employment.

- b. No prior COUNTY official or employee may after reasonable due diligence and inquiry by the PROVIDER be knowingly employed by Provider or receive compensation, wages or benefits from the PROVIDER for a period of one year from employment separation from the COUNTY if during the period of employment with the COUNTY, the employee or official had any direct or indirect involvement with the PROVIDER, this Contract and /or the services to be rendered pursuant to this CONTRACT. The PROVIDER shall immediately terminate employment of said person upon becoming aware of person's County employment.

11. Provider's Employees. PROVIDER shall require that its employees, and those with whom it contracts for services, be subject to all security regulations required by the COUNTY. All employees of PROVIDER must be subject to a thorough background check comparable to that of COUNTY employees for comparable positions. This will include a criminal background check and possibly a credit check. All background checks will be conducted by the COUNTY at no cost to Provider. By this Contract, the Provider is providing all releases, waivers, permission and authority necessary for the COUNTY to perform such back ground checks. The PROVIDER shall indemnify and hold the COUNTY harmless for any liability incurred resulting from said background checks.

12. County Obligations. COUNTY obligations shall include but not be limited to the following: purchase, installation, maintenance and upgrades of all existing and future EMR hardware and software; purchase, installation, and maintenance of all telemedicine hardware or software, imaging (including x-ray) hardware and software; provision of offender management system and EMR system hardware and software access to PROVIDER employees as mutually agreed to by COUNTY and PROVIDER;

COUNTY will ensure adequate working space for PROVIDER employees as mutually agreed to by COUNTY and PROVIDER; and

SAMPLE

provision of and payment for all furnishings and utilities (with the exception of long distance telephone costs) as necessary to provide adequate working conditions for PROVIDER employees as mutually agreed to by COUNTY and PROVIDER; and reasonable and adequate facility security and facility support of health care operations.

COUNTY shall be responsible for the costs of all healthcare services performed outside of the Facilities, including but not limited to: hospitalization, sub-acute care, surgery, non-emergency ambulance services, off-site specialists and office visits, dialysis and all other off-site care. Provider will have no liability for these off-site costs. Provider will use all reasonable effort to utilize the MED for off-site care to help minimize costs for the COUNTY.

13. Access To Records. During all phases of the work and Services to be provided hereunder, PROVIDER agrees to permit duly authorized agents and employees of the COUNTY to enter PROVIDER's offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The PROVIDER shall maintain all books, records, documents, papers, and other materials evidencing its provision of services under this Contract and for at least a three year period following termination of this Contract make such materials available to the COUNTY. PROVIDER will be provided reasonable access to any medical records and other documents that may be necessary in defense of any litigation that may arise after termination of this agreement. This provision shall survive termination of the Contract for at least three years.

14. Resolution Of Disputes.

In the event of a dispute between the parties to this Agreement, the following procedure will be used to resolve the dispute prior to the pursuit by either party of other available third-party remedies:

- a. A meeting (the "Initial Meeting") shall promptly be held at which all parties are present or represented by individuals with full decision making authority regarding the matters in dispute.

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- b. If, thirty (30) days following the Initial Meeting, the parties have not resolved the dispute, the dispute shall be submitted to mediation directed by a mediator mutually agreeable to the parties (the “Mediator”). Each party shall bear equally the costs of the mediation, including the Mediator’s fee.
- c. The parties agree to negotiate in good faith in the Initial Meeting and in mediation conferences.
- d. If, after a period of sixty (60) days following completion of the mediation conference or any adjournment thereof, the parties are unable to resolve the dispute, either party may resort to any other remedy at law or in equity available to such party.

Notwithstanding the above, the assessment of fines and penalties set forth this Contract, may occur and the timely payment of fines, and penalties and damages as set forth in and contemplated by this Contract shall occur without a party having to resort to the dispute resolution process set forth immediately above. The COUNTY however shall place and hold said fines and penalties in escrow upon being notified in writing by the PROVIDER that the PROVIDER contest said fine or penalty. The PROVIDER may subsequent to the payment of a fine or fines assessed and placed in escrow by the COUNTY resort to the dispute resolution process. The parties hereto do not intend that the PROVIDER may delay the payment (at least into escrow) of a fine or penalty by claiming access to the above dispute resolution process.

15. Responsibilities For Claims And Liabilities.

- a. PROVIDER shall indemnify, defend (with attorney acceptable to counsel and upon COUNTY’s request to do so), save and hold harmless the COUNTY, and its elected officials, officers, employees, agents, assigns and instrumentalities from any and against any and all claims, liabilities, losses or damages - including but not limited to Title VII and 42 USC 1983 prohibited acts arising out of or resulting from any conduct: whether actions or omissions; whether intentional,

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unintentional, or negligent; whether legal or illegal; whether performed by PROVIDER, its employees, agents, assigns or sub-providers; whether pursuant to a contractual arrangement with the COUNTY or otherwise; and whether pertaining to and /or arising from the provision of medical services to COUNTY inmates. This indemnification shall survive termination of this Contract. This provision of indemnification as well as all other indemnification obligations set forth herein and or as contemplated by this Contract is subject to the following provision b. below.

- b. PROVIDER and COUNTY agree to notify the other in writing within ten (10) days after either has received written notice of a claim involving the other party. For purposes of this provision, PROVIDER shall notify the COUNTY c/o Shelby County Government, Contracts Administration, 160 N. Main Street, Suite 550 Memphis Tennessee, 38103 with copy to Shelby County Attorney, 160 N. Main Street, sixth (6th) Floor, Memphis, Tennessee, 38103 of any suit made or filed against PROVIDER or its subcontractors regarding any matter resulting from or relating to this Contract or PROVIDER's performance of its services under this Contract and COUNTY will cooperate, assist and consult in the defense or investigation thereof.
- c. Notwithstanding any other provision herein:
 - i. COUNTY shall at the cost of PROVIDER have the right to choose its own attorney to represent it, which attorney may include but not be limited to an assistant COUNTY Attorney. Said attorney is subject to approval of PROVIDER's insurance carrier which approval shall not be unreasonably denied;
 - ii. PROVIDER shall advise COUNTY of its defense strategy(ies) in advance and may not assert any defense without giving written notice of same to COUNTY for claims involving COUNTY personnel;

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- iii. The COUNTY, if a named party, shall have the right to determine the forum for defense if more than one option exists;
 - iv. PROVIDER shall pay all costs associated with removal to any federal jurisdiction, whether or not at the direction of the COUNTY;
 - v. PROVIDER shall provide COUNTY with copies of all medical records and any other document that are the subject of any litigation matter, without cost to COUNTY;and
 - vi. PROVIDER shall make any health care provider and/or expert, acceptable to the COUNTY, available to the COUNTY upon its reasonable request and at no cost to the COUNTY.
 - vii. Notwithstanding the above, no part of this Contract will require any party to violate the rights of its insurance carrier.
- d. In addition to any other provision included herein, PROVIDER shall indemnify and defend with counsel acceptable to attorney and hold harmless COUNTY and its elected officials, employees and agents from the following provisions. Said provisions are not intended to limit paragraph 15. a. above.
- i. Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of PROVIDER, its officers, employees and/or agents, in connection with the performance of its contractual obligations;
 - ii. Any claims for goods or services rendered to PROVIDER by any person or firms performing or supplying services, materials or supplies in connection with the performance of PROVIDER's contractual obligations;
 - iii. Any claims or losses to any person injured or property damage resulting from the acts or omissions of PROVIDER,

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its officers, agents or employees in the performance of its contractual obligations;

- iv. Any claims or losses resulting to any person or firm injured or damaged by PROVIDER, its officers, agents or employees by the publication, translation, reproduction, delivery, performance, use or disposition of any data processed under the Contract in a manner not authorized by the Contract, or by federal or state regulations or statutes;
 - v. Any claims, damages, penalties, costs and attorney fees arising from any failure of PROVIDER, its officers, employee and/or agents, to observe State of Tennessee and other applicable laws, including but not limited to, labor laws and minimum wage laws;
 - vi. Any lawsuit filed against the COUNTY, its elected officials, employees or agents for any claims, damage, costs and/or attorney fees for injuries or damages arising from the acts or omissions of PROVIDER, its officers, employees, contractors and/or agents, in connection with the performance of this Agreement, PROVIDER shall defend and indemnify the COUNTY for all costs and expenses associated therewith.
- e. PROVIDER expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the PROVIDER shall in no way limit the responsibility to indemnify, defend, save and hold harmless the COUNTY or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.
- f. The COUNTY has no obligation to provide legal counsel or defense to PROVIDER or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this Contract against PROVIDER as a result of or relating to the Contract PROVIDER's performance of its services under this Contract.

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- g. Except as expressly provided herein, the COUNTY has no obligation for the payment of any judgment or the settlement of any claims against PROVIDER as a result of or relating to this Contract or PROVIDER's performance of its services under this Contract.
 - h. Provider indemnity excludes any claims, damages, costs and attorney fees for injuries or damages arising, in substantial part or in whole, from the gross negligence or intentional acts or omissions of COUNTY, its officers, employees or agents.
16. Third Party Payors. PROVIDER will forward to the COUNTY any payments received from any third party payor for medical services rendered to inmates under this Contract. The PROVIDER shall assist the COUNTY, as reasonably requested with obtaining payment for the COUNTY from third party payors for services (including medications). Any revenue generated through third party reimbursement shall be the property of the COUNTY.
17. General Compliance With Laws.
- a. The PROVIDER certifies that it is qualified and will take steps necessary to remain qualified to do business in the State of Tennessee and that it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of the Services under this Contract.
 - b. The PROVIDER is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of its services under the Contract. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, the Americans with Disabilities Act (ADA), and the established standards as that term is used herein above.
 - c. This Contract will be interpreted in accordance with the laws of

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the State of Tennessee. By execution of this Contract, the PROVIDER agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

18. Excused Performance

- a. In case performance of any terms or provisions hereof shall be delayed or prevented because of compliance within any law, decree or order of any governmental agency or authority of local, State or Federal governments or because of riots, public disturbances, strikes, lockouts, fires, floods, Acts of God or any other reason whatsoever which is not within the control of the parties whose performance is interfered with and which, by the exercise of reasonable diligence, said party is unable to prevent; the party so suffering may, at its option, suspend, without liability, the performance of its obligations hereunder during the period such cause continues.
- b. Dependency on Security. Provider shall not incur any liabilities for deficiencies which result from Provider's inability to complete tasks because of security issues. These issues include but are not limited to, long-term lock downs, inability or delays in moving patients, inability or delays in transportation of patients, and other security related events.

20. No Third-party Beneficiaries. Except as otherwise expressly provided herein, neither this Contract, nor any amendment, addendum or exhibit attached hereto, nor term, provision or clause contained therein, shall be construed as being for the benefit of, or providing a benefit to, any party not a signatory hereto.

21. Non-Discrimination. The PROVIDER hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which

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provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the PROVIDER on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The PROVIDER shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

22. Entire Agreement. This Contract and the Exhibits attached hereto represent the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether oral or written.
23. Amendment. This Contract may be modified or amended only by written instrument signed by both parties.
24. Severability. If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.
25. No Waiver of Contractual Right. No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed

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pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

26. Matters To Be Disregarded. The titles of the several sections, subsections, and paragraphs set forth in this Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Contract.
27. Non-Liability For Provider Employee Taxes. Neither PROVIDER nor its personnel are COUNTY's employees, and COUNTY shall not take any action or provide PROVIDER's personnel with any benefits and shall have no liability for the following:
 - a. Withholding FICA (Social Security) from PROVIDER's payments;
 - b. Making state or federal unemployment insurance contributions on behalf of PROVIDER or its personnel;
 - c. Withholding state and federal income tax from payment to PROVIDER;
 - d. Making disability insurance contributions on behalf of PROVIDER;
 - e. Obtaining workers' compensation insurance on behalf of PROVIDER or PROVIDER's personnel.
28. Incorporation Of Other Documents.
 - a. PROVIDER shall provide services pursuant to this Contract in accordance with the terms and conditions set forth within the COUNTY Request for Proposals/Bids as well as the Response of PROVIDER thereto, all of which are maintained on file within the Shelby COUNTY Purchasing Department and

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incorporated herein by reference.

- b. It is understood and agreed between the parties that in the event of a variance between the terms and conditions of this Contract and any amendment thereto and the terms and conditions contained either within the Request for Proposals/Bids or the Response thereto, the terms and conditions of this Contract as well as any amendment shall take precedence and control the relationship and understanding of the parties. The inclusion of information in the Request For Proposed Bids versus the omission of said information with Contract shall not be considered a variance for purposes of this Contract.
- 29. Contracting With Locally Owned Small Businesses. The PROVIDER shall take affirmative action to assure that Locally Owned Small Businesses that have been certified by the COUNTY are utilized when possible as sources of supplies and equipment, construction and services.
- 30. Right To Request Removal of Provider's Employees. The COUNTY may interview the personnel PROVIDER assigns to COUNTY's work. COUNTY shall have the right, at any time, to request removal of any employee(s) of PROVIDER, whom COUNTY deems to be unsatisfactory for any reason. Upon such request, PROVIDER shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.
- 31. Incorporation of Whereas Clauses. The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.
- 32. Disclosure of Reports, Data or Other Information. Notwithstanding anything to the contrary contained herein or within any other document supplied to COUNTY by PROVIDER, PROVIDER understands and acknowledges that COUNTY is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to COUNTY by PROVIDER due to Services performed pursuant to this Contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee. Should the COUNTY in good faith based upon its interpretation of law request of PROVIDER to keep

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information from being publicly disclosed, the PROVIDER shall not willingly or voluntarily publicly disclose such information without the written consent of the COUNTY to do so. PROVIDER shall further take all reasonable action at its cost to defend against public disclosure.

33. Organization Status and Authority.

- a. PROVIDER represents and warrants that it is a corporation, limited liability company, partnership, or other entity, validly existing and in good standing under the laws of the State of Tennessee and is qualified to do business in the State of Tennessee; it has the power and authority to own its properties and assets; and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.
- b. The execution, delivery and performance of this Contract by the PROVIDER has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of PROVIDER, any provision of any indenture, agreement or other instrument to which PROVIDER is a party, or by which PROVIDER's respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

34. Insurance Requirements.

- a. The PROVIDER shall purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the COUNTY from claims which may arise out of or result from the PROVIDER's operations and provision of services under the Contract, whether such operations are performed by itself or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the PROVIDER or subcontractor may be liable.

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- b. The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater. Shelby County Government, its elected officials, appointees, volunteers, board members, agents, employees and the like will be named as additional insured. The PROVIDER will maintain throughout the life of this Contract insurance, through insurers rated A- or better by A.M. Best, with at least the minimum requirements set forth herein below. No performance bond will be required. Each and every contract of insurance shall include a provision that the COUNTY shall receive 30 days prior written notice before any policy is amended, cancelled, terminated and/or not to be renewed. The PROVIDER shall provide the COUNTY 30 days prior written notice before any policy is amended, cancelled, terminated and/or not to be renewed.
- i. Professional Liability: medical malpractice covering the PROVIDER and all medical professionals employed or contracted by PROVIDER, with minimum limits of \$1,000,000.00 per occurrence and \$3,000,000.00 in annual aggregate. Provider's total company policy aggregate must maintain a minimum limit of \$10,000,000. Should PROVIDER carry "claims made" insurance, the PROVIDER must purchase a "tail" or show proof of tail coverage to cover claims made through the statute of limitations.
- ii. Commercial General Liability Insurance: \$2,000,000.00 limit per occurrence bodily injury and property damage; \$5,000,000.00 General Aggregate Premises Operations; and \$5,000,000.00 Products-Completed Operations Aggregate. The COUNTY, its elected officials, appointees, employees, volunteers and members of boards, agencies and commissions will be listed as additional insureds regarding operations under PROVIDER's insurance. The insurance shall include coverage for the following:
 - (a.) Premises/Operations
 - (b.) Products/Completed Operations
 - (c.) Contractual

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- (d.) Independent Contractors and Sub-contractors
- (e.) Broad Form Property Damage
- (f.) Personal Injury

iii. Workers Compensation and Employer's Liability Insurance: Worker's Compensation statutory benefits, including employer's liability with minimum limits of:

- (a.) Employers' Liability coverage for, \$1,000,000.00 per accident;
- (b.) Employers' Disease each employee, \$1,000,000.00; and
- (c.) Employers' Liability Disease Policy Limit \$1,000,000.00.

The PROVIDER's Workers Compensation policy will include the following endorsement: WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT: (form WC 00 03 13.). A complete copy of this form will be included in the documents provided to the COUNTY by PROVIDER's insurance company.

iv. Third Party Employee Dishonesty Coverage minimum limits of \$25,000.00 per employee or \$50,000.00 per claim.

v. Automobile Liability Insurance. :PROVIDER must provide automobile liability coverage with a minimum limit of \$1,000,000.00 each accident for property damage and personal injury. Coverage is to be provided on any owned ,leased, hired and/or non-owned autos.

vi. All Risk coverage on PROVIDER's property, equipment, furnishings, and improvement and betterments. PROVIDER will waive its right of subrogation against the COUNTY in regards to its property. (Shelby County will NOT waive its right to subrogate against PROVIDER in the event of damage to COUNTY property.)

c. Self insured retentions or deductibles of \$25,000.00 or over per loss or claim must be approved and agreed to in writing by the

SAMPLE

COUNTY at or prior to execution of this Contract if the PROVIDER is to have and maintain such retentions or deductibles. The self insured retention rates for Provider at the time of Contract execution are \$50,000.00 per claim for Professional Liability and General Liability, and these rates have been approved by the COUNTY.

- d. PROVIDER shall provide COUNTY with a current copy of the Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal copies on each anniversary date. The certificate holder is to read:

Shelby County Government
Purchasing Department
160 N. Main, Suite 550
Memphis, Tennessee 38103

- e. Upon termination or cancellation of any claims made insurance currently in effect under this Contract, the PROVIDER shall purchase an extended reporting endorsement and furnish evidence of same to the COUNTY.

36. Disasters.

- a. The PROVIDER shall within 30 days from the effective date of the Contract, provide to COUNTY written policies and procedures for the delivery of medical services in the event of a disaster such as fire, tornado, flood, earthquake, epidemic, riot, strike or mass arrests. This "Disaster Plan" shall be developed and/or instituted by the PROVIDER working closely with the COUNTY's designee and shall be approved by the COUNTY. The plan shall include, but not be limited to: Establishment of communications system; Recall of key staff; Assignment of healthcare staff; Establishment of command post; Safety and security of the patient and staff areas; Use of emergency equipment and supplies; Establishment of a triage area; Triage procedures; Medical record- identification of injured; Use of ambulance services; Transfer of injured to local hospitals;

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Evacuation procedures (to be coordinated with security personnel); and Practice drills which shall be conducted annually.

- b. The PROVIDER shall provide a Familiarization Staff Training Program within thirty (30) days from the effective date of the Contract and thereafter annually for all healthcare employees in case of an institutional emergency, including riots, hostage events and escapes. Emergencies shall be handled in the following manner:
 - i. All in-house measure for dealing with the emergency shall be taken;
 - ii. The Disaster Plan as discussed above shall be put into effect;
 - iii. In case of natural disasters, such as hurricanes, which are beyond the control of the PROVIDER, the COUNTY may contract for or provide medically necessary services resulting from the natural disaster with any healthcare provider, including the PROVIDER. Rates of reimbursement for these services, if necessary, will be negotiated with the COUNTY. Notwithstanding these Disaster provisions, if the PROVIDER can provide the services as contemplated by this Contract, the PROVIDER shall to the extent reasonably possible, provide its services to the COUNTY.

37. Notice

Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the COUNTY's authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County Health Department
 814 Jefferson Avenue

SAMPLE

Memphis, Tennessee 38105
Attn.: Mr. Johnathan Russell

And

Shelby County Government
Contract Administration
160 N. Main St., Suite 550
Memphis, Tennessee 38103

PROVIDER:

Attn: _____,
CEO/President
Address _____
City, State Zip Code _____

38. HIPAA

PROVIDER warrants to the COUNTY and State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act and accompanying regulations, and as they may have been amended from time to time, and will comply with all applicable HIPAA and HITECH requirements in the course of this Contract. PROVIDER warrants that it will cooperate with the COUNTY and State in the course of performance of the Contract so that all parties will be in compliance with HIPAA and HITECH, including cooperation and coordination with COUNTY and State privacy officials and other compliance officers required by HIPAA and its regulations. PROVIDER will sign any documents that are reasonably necessary to keep the State and the COUNTY in compliance with HIPAA, including, but not limited to, business associate agreements. A Business Associate Agreement is attached hereto and incorporated herein.

39. Termination/Expiration of Contract. Both parties agree to cooperate with the other and act in good faith at the end of the Term of this Contract to transition all inmate medical care to the COUNTY and/or any new treatment PROVIDER as designated by the COUNTY.

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PROVIDER agrees to turn over custody of all current medical records, charts, tests, or any other tangible instruments in the possession of PROVIDER that constitute the inmates' health care records and relating to the Services provided to COUNTY at the end of the Term at no cost to and without further written request from the COUNTY. The parties agree that the COUNTY owns all rights, title and interest to all COUNTY patient data, and Provider agrees to return such data to the COUNTY at no cost to COUNTY in a usable industry standard format. All equipment, supplies, etc. belonging to PROVIDER shall be removed by PROVIDER at its sole cost and expense. All equipment, supplies, etc. belonging to the COUNTY shall remain at its facilities and in the custody of the COUNTY. Any issues arising during the transition period and prior to the end of the Term shall be resolved between the parties as required and in good faith to provide medically appropriate continuity of care to each inmate.

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IN WITNESS WHEREOF, the parties hereto have set their signatures for the purposes contained herein, on the day and date first above written.

APPROVED:
SHELBY COUNTY GOVERNMENT

Mark H. Luttrell, Jr., Mayor

SHELBY COUNTY HEALTH DEPARTMENT

Yvonne S. Madlock, Director

Contract Administrator/
Assistant County Attorney

Assistant County Attorney

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PROVIDER

BY: _____

TITLE: President and CEO

CORPORATE ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the _____, the within named bargainor and that he as such _____, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as _____.

WITNESS my hand and official seal at office this _____ day of _____, 20__.

Notary Public

My Commission Expires: _____