

PHARMACEUTICAL SERVICES CONTRACT

This Contract, a professional services Contract under the law of the State of Delaware, is made this 1st day of July 2014, by and between Correct Rx Pharmacy Services, Inc. (“CRX”) and the State of Delaware Department of Correction (“DOC”).

RECITALS

WHEREAS, DOC desires to procure professional pharmaceutical services to serve the needs of the State of Delaware and its incarcerated offender population; and

WHEREAS, DOC has asked prospective vendors to submit proposals in relation to Proposal No. DOC1427-PHARM; and

WHEREAS, CRX submitted a proposal to provide certain health care services and such proposal was accepted by DOC;

NOW, THEREFORE, in consideration for the mutual promises contained herein, the parties enter into this Contract and each of the documents that comprise this Contract as specifically incorporated by reference herein and revoke any previous contracts between the parties. All references to the “State”, “Delaware”, “DDOC”, or the “Department of Correction” shall be deemed as references to DOC. All references to CRX, “Correct Rx Pharmacy Services” or “Correct Rx Pharmacy Services, Inc.” shall be deemed as a reference to CRX. The terms and conditions of this Contract are contained within this document and which shall include by reference the following documents:

- This Contract;
- The DOC Request for Proposals for Proposal No. DOC1427-PHARM and any amendments thereto (Exhibit A);
- CRX’s Proposal in response to Exhibit A (Exhibit B).

NOW THEREFORE, DOC and CRX mutually agree as follows:

1. **Contract Term.** Subject to the other terms and provisions hereof, the initial term of this Contract will be for **four (4)** years commencing on July 1, 2014 (the “commencement date”) and shall terminate, unless renewed, on June 30, 2018 (the “natural termination date”). The Contract may be renewed on the sole discretion of DOC for **two (2) additional two (2) year renewal** periods.

2. Contract **Price.** DOC and CRX agree that each month’s invoice shall include:

A. the monthly Per Inmate Per Month (PIPM) management fee of **\$9.98** multiplied by the Average Daily Population (ADP). The billing will be based upon the actual average daily population provided by the DDOC for the preceding month;

B. one twelfth (1/12) of the annual costs (**\$823,820**) for the Clinical Pharmacists at **\$68,651.67** per month;

C. the medication acquisition costs as determined by the costs documented for each prescription on the monthly Active Prescription Spreadsheet;

D. CRX shall be solely responsible and shall receive no compensation or reimbursement for all costs associated with Emergency Back-up pharmaceutical medications unless there is a change in Scope of Work, change to DDOC Policy and Procedures, or other extraordinary circumstances that are a departure from the historical utilization;

E. any itemized additional chargeable expenses such as Durable Medical Supplies and Equipment, and IT costs; and

F. credits for Medicaid or other reimbursements, applicable discounts and rebates from suppliers.

The total annualized estimate and total annual Contract price shall not exceed **\$8,390,700**, broken down as PIPM costs of **\$838,320** plus Clinical Pharmacist costs of **\$823,820** plus medical acquisition costs of **\$6,728,560**. CRX shall submit to DOC an invoice on or about the 5th day of each month commencing on August 5, 2014. DOC shall pay each invoice within 30 days of receipt, subject to DOC's rights of offset for amounts owed by CRX to DOC. The amount of said monthly payment shall be subject to modification only as set forth in this Contract or as mutually agreed upon by the parties pursuant to a subsequent mutually-signed writing. Adjustments to compensation may occur either on a monthly, quarterly, or annual basis pursuant to Medicaid reimbursements, quality assurance reviews, audit compliance, and staffing allocation oversight functions only as set forth in this Contract, its exhibits, or attachments.

Invoices shall be submitted in electronic format to:

John Oldigs
Senior Fiscal Administrative Officer
245 McKee Rd.
Dover, DE 19904
john.oldigs@state.de.us

3. ***Superseding Modifications to Contract Documents.*** The following terms and conditions shall, in addition to the other paragraphs of this Contract, supersede any language in the Exhibits to this Contract:

A. the Contract Price as outlined in Paragraph 2 is based on a Per Inmate per Month (PIPM) of **\$9.98** per offender, per day based upon an Average Daily Population ("ADP") defined as the actual average daily population

provided by the DDOC for the preceding month. The \$9.98 PIPM management fee will remain unchanged through June 30, 2015. The PIPM thereafter will be increased annually by 3% on the anniversary date (July 1st) of the contract.

B. The billing rate for our Clinical On-Site pharmacists will remain unchanged through June 30, 2015. The billing rate will be increased annually by 3% on the anniversary date (July 1st) of the contract.

C. DOC waives its requirement for any form of performance bond to be provided by CRX as set forth in Exhibit A.

D. CRX warrants that medications ordered on or before 4 p.m. will be delivered to the ordering facility on the same day that the medication was ordered.

E. CRX warrants that medications ordered after 4 p.m. will be delivered to the ordering facility by the next day.

F. CRX agrees that DOC shall pay no more than **\$25,000.00** to CRX in relation to any CRX activity relating to the integration with, training for, utilization of, or access to any Electronic Medical Record ("EMR") provided by DOC or another party Contracting with DOC.

F. CRX shall provide consulting and other services and assistance in connection with the DOC's efforts to attain ACA accreditation, as requested.

4. **Major Equipment Purchases.** The parties acknowledge that DOC shall pay for any equipment which may be necessary, required and requested by CRX under the operation

of this Contract which individually exceeds **\$500.00 per individual item**. All equipment, supplies, and fixtures currently in place at or located within the facilities at which services shall be provided shall be made available to CRX at no cost to or credit against CRX in connection with the performance of its services hereunder. In addition, DOC shall provide at its cost and expense all reasonable maintenance services required and requested by CRX in connection with any equipment or any part of the facilities.

5. Adequate Performance Defined. The parties acknowledge and agree that minimally adequate performance under this Contract requires both a minimum level of staffing and the adequate provision of pharmaceutical services. The adequacy of healthcare services and overall Contract performance shall be measured not only by the level of staffing but also by CRX's performance in relation to the audits set forth herein at Exhibit A and adherence to ACA and NCCHC standards and the policies of the DOC's Bureau of Correctional Healthcare Services. The Parties agree that staffing levels, audit performance, the assistance in attainment of ACA accreditation and assistance in maintenance of ACA and NCCHC accreditations, and adherence to the policies of the DOC's Bureau of Correctional Healthcare Services are each material terms of this Contract.

6. Legal Requirements. CRX shall maintain all licenses, certifications, and insurance coverages necessary or legally required to perform its obligations during the entire term of this Contract.

7. Expense of Performance. Unless provided otherwise in this Contract, all expenses incurred in the performance of the services are to be paid by CRX. If this Contract

specifically provides for expense reimbursement, CRX shall be reimbursed only for reasonable expenses incurred by CRX in the performance of the services.

8. ***State Sovereignty.*** Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Contract.

9. ***Acceptance; Non-Waiver.*** Permitted or required approval by Delaware of any services furnished by CRX shall not in any way relieve CRX of responsibility for the professional and technical accuracy and adequacy of its work. DOC's review, approval, acceptance, or payment for any of CRX' services herein shall not be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and CRX shall be and remain liable in accordance with the terms of this Contract and applicable law for all damages to Delaware caused by CRX's performance or failure to perform under this Contract.

10. ***Reservation of Rights.*** The rights and remedies of Delaware provided for in this Contract are in addition to any other rights and remedies provided by law.

11. ***Confidentiality.*** To the extent permissible under federal law and 29 *Del. C.* § 10001, *et seq.*, the parties to this Contract shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Contract.

12. ***Independent Contractor; Employment Decisions.*** CRX has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by CRX in the performance of the services hereunder; provided,

however, that it will, subject to scheduling and staffing considerations, attempt to honor DOC's request relating to specific individuals.

13. ***Independent Contractor; Generally.*** It is understood that in the performance of the services herein provided for, CRX shall be, and is, an independent Contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Contract. In addition to its responsibilities under as set forth in Exhibit A, CRX shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever. CRX acknowledges that CRX and any subcontractors, agents or employees employed by CRX shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents. CRX shall be responsible for providing necessary liability insurance for itself and its personnel. As an independent Contractor, CRX has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

14. ***Multi-Source Vendor Cooperation Essential.*** The State of Delaware has chosen to employ a multi-source solution to the provision of offender healthcare services. CRX has been selected to provide a vital, critical, and essential portion of the total healthcare services to be provided to the State of Delaware's incarcerated population. In addition to CRX, other vendors have been selected to provide other critical healthcare functions. Communication and cooperation between such vendors, including CRX, is absolutely essential and of the highest order of materiality. CRX agrees and warrants that it shall provide absolute cooperation with any other healthcare services vendor providing services to DOC and the State of Delaware offender population.

15. ***Severability.*** If any term or provision of this Contract is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Contract, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and Contracts of the parties herein set forth.

16. ***Assignability.*** This Contract may be assigned with written consent of the DDOC, which consent may be withheld for any or no reason at all.

17. ***State Appropriations Mandatory Condition of State Performance.*** Validity and enforcement of this Contract is subject to appropriations by the General Assembly of the State of Delaware of the specific funds necessary for Contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Contract, and absent such action this Contract shall be terminated as to any obligation of the State

requiring the expenditure of money for which no specific appropriation is available, at the start of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. Notwithstanding any other provisions of this Contract, this Contract shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

18. ***Termination for Cause.*** If for any reason, or through any cause, the Vendor fails to fulfil in timely and proper manner its obligations under the Contract, or if the Vendor violates any of the covenants, Contract or stipulations of the Contract, the DOC shall thereupon have the right to terminate the Contract by giving written notice to the Vendor of such failure and demand that such failure be cured within 30 days. If such obligations, covenants, Contracts or stipulations are not cured to the satisfaction of DOC within 30 days from the date of the notice, DOC may terminate the Contract with the Vendor by providing a termination date no shorter than 90 days after the date of the cure notice. In that event, all finished or unfinished documents, charts, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the Contract shall, at the option of the DOC, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is useable to the DOC. In the event of a termination for cause, CRX agrees that it will not be entitled to any compensation, whether equitable or monetary, related to any unexecuted portion of this Contract.

19. ***Termination for Convenience.*** The DOC may terminate the Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least

one hundred and twenty (120) days before the effective date of such termination. In that event, all finished or unfinished documents, charts, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the Contract shall, at the option of the DOC, become its property, and the Vendor shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to the DOC. If the Contract is terminated by the DOC for convenience the Vendor will be paid for services actually rendered in accordance with the contract. Except as set forth in this Paragraph, In the event of a termination for convenience, CRX agrees that it will not be entitled to seek in any forum equitable or monetary relief related to any executory portion of this Contract.

20. ***Non-Waiver.*** The delay or failure by either party to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

21. ***Public Records; DOC's Right to Inspect.*** CRX shall maintain all public records, as defined by 29 Del. C. § 502(1), relating to this Contract and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 Del. C. Ch. 5. During the term of this Contract, authorized representatives of Delaware may inspect or audit CRX' performance and records pertaining to this Contract at the CRX business office during normal business hours.

22. ***Proof of Insurance.*** Before any work is done pursuant to this Contract, the Certificate of Insurance and/or copies of the insurance policies, referencing the Contract

number stated herein, shall be filed with the State. The certificate holder is as follows: Correct Rx Pharmacy Services. In no event shall the State of Delaware be named as an additional insured on any policy required under this Contract. CRX warrants that the amounts of insurance required by this Contract will remain in full force and effect during the full term of this Contract without lapse or diminution of required coverage limitations.

23. ***Choice of Law and Venue.*** The laws of the State of Delaware shall apply, except where federal law has precedence. CRX consents to jurisdiction and venue within the State of Delaware. CRX must remain in good financial standing with the State of Delaware.

24. Contract ***Contents; Documents and Order of Authority.*** The following documents contain the essential and material terms of the Contract between DOC and CRX:

- 1) This Contract;
- 2) The DOC Request for Proposals for Proposal No. DOC1427-PHARM and any amendments thereto (Exhibit A); and
- 3) CRX's Proposal (Exhibit B) in response to Exhibit A.

In the event of a conflict, contradiction, vagueness and/or ambiguity with respect to or in relation to the contents of the above-listed documents, the above-listed numerical order shall dictate and control the terms of this Contract such that the authority of each successive document is controlled by the preceding document, with this Contract containing the highest level of authority.

25. ***Entire Agreement; Interpretation; Modification.*** This Contract and its Exhibits shall constitute the entire Contract between DOC and CRX with respect to the subject matter of this Contract and shall not be modified or changed without the express written

consent of the parties. The provisions of this Contract supersede all prior oral and written quotations, communications, Contracts and understandings of the parties with respect to the subject matter of this Contract. If the scope of any provision of this Contract is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Contract shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law. No waiver of any provision of this Contract shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

26. **Joint Drafters.** This Contract was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the plain and fair meaning thereof.

IN WITNESS WHEREOF, the parties have set their hands and seals hereto as of the day and year first above written.

STATE OF DELAWARE,
DEPARTMENT OF CORRECTION

By: Original on File

Print Name: ROBERT M. COUPS

Title: COMMISSIONER

Date: 06/30/2014

CORRECT RX PHARMACY
SERVICES, INC.

By: Original on File

Print Name: ELLEN H. YANKELLOW

Title: PRESIDENT & CEO

Date: 6/30/2014