

CONTRACT BETWEEN  
TEXAS DEPARTMENT OF CRIMINAL JUSTICE  
AND  
TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER  
  
FOR  
CORRECTIONAL HEALTH SERVICES  
FY 2012-2013 BIENNIUM

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#### List of Exhibits

- Exhibit A: Offender Health Services Plan
- Exhibit B: Description of Functional Responsibilities
- Exhibit C: Correctional Pre-Service Training Schedule
- Exhibit D: FY 2012-2013 Capacity and Average Population by Unit
- Exhibit E: FY 2012-2013 ACA Accreditation Schedule

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**PREAMBLE**

This Contract is entered into by and between the TEXAS DEPARTMENT OF CRIMINAL JUSTICE ("TDCJ") and the TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER ("TTUHSC"), pursuant to the authority granted by and in compliance with the provisions of Chapter 501, Subchapter E, Texas Government Code and any applicable provisions of the Appropriations Act, and upon ratification by each respective party's Board. The terms, conditions, obligations and responsibilities agreed to by the parties are set forth below:

WHEREAS, Chapter 501, Subchapter E, Texas Government Code, establishes the Correctional Managed Health Care Committee, the CMHCC, and directs them to develop a managed health care plan for the provision of health care to offenders for and on behalf of, the Texas Department of Criminal Justice ("TDCJ");

WHEREAS, the TDCJ has directly received appropriations intended to fund health care services for offenders incarcerated in its facilities and the authority to contract for health care services;

WHEREAS, the TDCJ intends to contract with the TTUHSC to furnish medical and psychiatric care to offenders; and,

WHEREAS, to the extent possible, the TTUHSC, at the direction of the TDCJ, shall provide such services through its own capabilities or by further subcontracting;

NOW, therefore, for and in consideration of the foregoing and in further consideration of the mutual benefits, the parties hereto agree as follows:

**Article I**  
**DEFINITIONS**

- 1.1 Allowable Cost: Defined expenditures per the State Comptroller's guidelines for general revenue funds to include reasonable and necessary cost to provide health care.

- 1.2 Capital Assets: State property that has an estimated life of greater than one year and are recorded as capital assets in the State Property Accounting ("SPA") system.
- 1.3 Correctional Managed Health Care Committee ("CMHCC"): A committee established by Texas Government Code, Section 501.133, consisting of five voting members and one nonvoting member. Voting members of the CMHCC include one member, from the TDCJ, one member who is a physician of the UTMB, one member who is a physician of the TTUHSC and two public members appointed by the Governor, at least one of who must be licensed to practice medicine in this state. The state Medicaid director serves ex officio as a nonvoting member. The CMHCC is responsible for performing duties listed in Texas Government Code, Section 501.148.
- 1.4 Correctional Managed Health Care Policies and Procedures: Those policies and procedures promulgated for the correctional health care program pursuant to the joint committee process outlined in Article II.F.5.
- 1.5 Health Care: Health related actions taken, both preventive and medically necessary, to provide for the physical and mental well-being of the offender populations. Health Care, among other aspects, includes medical services, dental services, and mental health services. For the purposes of this Contract, the definition does not include inpatient/outpatient substance abuse or sex offender treatment.
- 1.6 Hospital Medical Records: All records pertaining to the history, diagnosis, treatment or prognosis of a TDCJ offender treated pursuant to the terms of this Contract which are generated and maintained by the treating hospitals, including subcontractors, made a part of the offender's medical record.
- 1.7 Medically Necessary: Services, equipment, or supplies furnished by a Participating Provider which, under the provisions of this Contract, are determined to be:
- (1) Appropriate and necessary for the symptoms, diagnosis or treatment of the medical condition; and
  - (2) Provided for the diagnosis or direct care and treatment of the medical condition; and

- (3) Within standards of good medical practice within the organized medical community; and
- (4) Not primarily for the convenience of the TDCJ Offender Patient, the physician or another provider, or the TDCJ Offender Patient's legal counsel whether or not for or in anticipation of litigation; and
- (5) The most appropriate provision or level of service which can safely be provided. For Inpatient Services, this means acute care necessary due to the kind of services the TDCJ Offender Patient is receiving or the severity of the condition and that safe and adequate care cannot be received as an outpatient or in an infirmary setting (or similarly less-intensified medical setting).

1.8 **Medical Records:** All records, to include electronic, pertaining to the history, diagnosis, treatment or prognosis of a TDCJ offender treated which are generated at TDCJ owned or operated facilities or private contractor owned and/or operated facilities that house incarcerated offenders for the benefit of TDCJ and regardless as to whether maintained by the TTUHSC in accordance with this Contract. The definition includes but is not limited to privately operated state jails, prison units, Intermediate Sanction Facilities, Pre-Parole Transfer Facilities or other secure Facilities in which TDCJ offenders are incarcerated. The definition does not include hospital records maintained by the treating hospital made a part of the offender's medical file. Medical records, for the purpose of this Contract, do not include substance abuse treatment information and sex offender treatment program records generated and maintained by TDCJ. However, this term does include any substance abuse and sex offender treatment information and records collected or originated in connection with the health care services provided pursuant to this Contract.

1.9 **Natural or Manmade Catastrophe:** An unanticipated event, including but not limited to, major riot, explosion, fire, earthquake, hurricane, tornado, flood, plague, poison, terrorist act, war, hazardous substances, and any other natural disaster, which, in the opinion of the TDCJ, requires the provision of medical services to TDCJ offenders in excess of those services within the routine anticipation of this Contract's Article II and therefore require reimbursement beyond the payment provisions of this Contract.

- 1.10 Offsite Services: All Health Care provided to TDCJ offender patients outside of the TDCJ Unit including outpatient services, emergency services, hospitalization, and inpatient services.
- 1.11 Onsite Services: Health Care provided for TDCJ offenders "onsite" at those TDCJ Units, including infirmary care at those TDCJ Units with infirmary care and those pharmacy services provided to TDCJ Units for medically necessary prescription and over the counter drugs.
- 1.12 Participating Provider: All of the Health Care providers who provide covered services to TDCJ's offender patients.
- 1.13 Practitioner Subcontractor: A physician, dentist, optometrist, nurse practitioner, or physician assistant providing Health Care to TDCJ offenders.
- 1.14 TDCJ Employee: Individual who is an employee of the Texas Department of Criminal Justice.
- 1.15 TDCJ Offender: Those individuals confined by appropriate legal processes and incarcerated in the TDCJ's state owned facilities.
- 1.16 Texas Department of Criminal Justice ("TDCJ"): An agency of the State of Texas responsible for the incarceration of convicted felons.
- 1.17 Texas Tech University Health Sciences Center ("TTUHSC"): An institution of higher education of the State of Texas responsible for the education of health professionals in the delivering of professional health services.
- 1.18 The University of Texas Medical Branch at Galveston ("UTMB"): A component institution of higher education of the University of Texas System responsible for the education of health care professionals in the delivering of professional health services.

## Article II SERVICES

- A. **Scope and Intent:** To implement the managed health care plan consistent with the requirements of Chapter 501, Subchapter E, Texas Government Code, the TTUHSC shall provide for the delivery of Health Care as defined in the Offender Health Services Plan (hereby incorporated as Exhibit A) and as further defined herein to those TDCJ

offenders in units covered by this Contract and assigned to TTUHSC in Exhibit D. This Contract is intended to define the roles and responsibilities of the TDCJ, the CMHCC the TTUHSC and the UTMB, and incorporates the description of functional responsibilities found in Exhibit B.

- B. **Uniform Level of Care:** It is the intent of the parties, in exchange for the payments herein defined, that the TTUHSC provide a uniform level of Health Care to all TDCJ offenders.
- C. **Offender Health Services Plan:** The Offender Health Services Plan (Exhibit A), as approved by the CMHCC, and subsequent revisions to that Plan that are approved by the CMHCC, shall describe the services provided to TDCJ offenders under this Contract. All services are subject to a determination of medical necessity. Changes to the Offender Health Services Plan will be considered and approved by the CMHCC only after approval of the changes by each of the Medical Directors through a joint committee process similar to that utilized for approval of health services policies and procedures.
- D. **Onsite Services:** Health Care Onsite Services include, in addition to the services detailed in the Offender Health Services Plan:
1. Unit level Health Care Services, including sick call and nursing coverage at a level required for maintaining accreditation and meeting access to care standards.
  2. Medical record services with the exception of substance abuse and sex offender records, to include duplication of medical records as required by policy.
  3. Health education/training for offenders, health care providers and correctional officers, as per policy.
  4. Health care-related administrative management services.
  5. First aid kits and spill kits, as specified in health services policy.
  6. Supplies, sterile packs and gloves for the medical department only.
  7. Bio-hazardous waste disposal.
  8. Certified or licensed personnel to dispense medication at all units.

9. Diagnostic services at designated facilities.
  10. Collection of samples for purposes of DNA analysis as required by state law.
  11. HIV testing as required by state law.
  12. Emergency preparedness and response.
  13. Dialysis services.
  14. Pharmacy Services, subject to the requirement that all medications must be approved by and prescribed by legally authorized providers contracting with the TDCJ or the TTUHSC.
  15. The TTUHSC will ensure that unit security personnel have immediate access to Automated External Defibrillators (AED's) at times when the unit is not staffed with licensed health care personnel.
- E. **Offsite Services:** Health Care Offsite Services include in addition to the services detailed in the Offender Health Services Plan:
1. Emergency, inpatient, and outpatient services at hospitals (including infirmary and observation room services).
  2. Specialty physician consults, surgeries, and treatment.
- F. **Centralized Statewide Services:** UTMB shall provide for delivery of the following centralized services statewide on behalf of the TDCJ:
1. Medical Records: maintain paper and electronic medical records, archive, manage electronic medical records, provide technical support, and maintain forms control and death records.
  2. Radiology: liaison with the Bureau of Radiation Control, provide radiation safety services, equipment registration with Bureau of Radiation Control and coordinate related policy and procedure development or revision.
  3. Medical Training: provide health-related training required for security staff during pre-service (Exhibit C) and in-service training academies, including CPR instructor's training for TDCJ academy staff and annual AIDS education for TDCJ staff, according to the schedule and locations found in the schedule published by the TDCJ.

4. **Burial/Autopsies:** coordinate and pay for burials and autopsies on a statewide basis for deceased offenders in units covered by this Contract and listed in Exhibit D. A copy of the autopsy report shall be provided to the TTUHSC within 30 days of receipt of the final report. The TDCJ Office of Inspector General, after conducting a custodial death investigation, may request that a deceased offender's body be sent to a Medical Examiner for autopsy. UTMB's financial responsibility for the costs of an independent autopsy requested by the Office of Inspector General shall be limited to UTMB's current contracted rate for an autopsy examination. The disposition of remains will be conducted in accordance with TDCJ policy AD-03.29 (Procedures for Offender Deaths).
5. **Policy/Procedures:** provide the TDCJ with staff and clerical support for initiation of new policies, annual revision of current policies and distribution of same. All statewide Health Services policies and procedures will be developed through a joint policy and procedure committee process that includes representatives of TDCJ, UTMB, TTUHSC and the CMHCC. All policies approved by the joint policy and procedure committee shall be submitted for review and approval by each Medical Director. The TDCJ Medical Director shall retain final approval authority for all statewide policies.

**G. Services Provided by TDCJ:** The TDCJ shall provide the following services which shall be financed directly by the TDCJ including, but not limited to:

1. Utilities, housekeeping, medical office trash removal, housekeeping supplies (including paper towels, toilet tissue, trash bags, floor buffers and pads, soap, wax, etc.) and maintenance of TDCJ facilities, to include good faith efforts to maintain necessary HVAC systems for medical clinic service areas in operable condition.
2. Administrative support services, including but not limited to, access and use of agency motor pool resources to include such items as fuel, tires, batteries, routine servicing for vehicles used solely for the provision of services to TDCJ offenders; access to and use of agency mail systems; and, use of agency mainframe computer applications and basic telephone services. Administrative support services shall be used solely for TDCJ offender care.

3. All capital equipment customarily included as part of the construction of any new TDCJ Unit Clinics occupied after the effective date of this Contract. Prior written approval of the TDCJ is required for the addition of major capital equipment items which require additional facility infrastructure support such as power, water, wastewater, air conditioning, etc. to ensure sufficient support is available. Requests should be sent to the Facilities Division, Planning and Programming Branch for written approval and coordination.
4. General and security orientation.
5. Routine and scheduled offender transportation services that do not require the presence of attending medical staff during transportation (e.g., EMS ambulance runs). It is the intent of the parties to develop mutually acceptable schedules for routine transportation services provided by the TDCJ in order to maximize transportation efficiency to the extent practical.
6. All necessary TDCJ forms/medical records used on site.
7. TDCJ policy and procedure manuals and guides, and appropriate revisions.
8. Printing of bilingual educational materials.
9. Computerized pharmacy system mainframe and peripheral equipment, maintenance and servicing.
10. Substance Abuse and Sex Offender Treatment programs and counseling.
11. Communication and coordination between the parties for TDCJ Unit completion and offender arrival schedules, with notification of offender occupancy a minimum of thirty (30) days prior to scheduled openings.
12. Requesting appropriations for funding of the correctional managed health care program from the legislature.
13. Correctional officers to be assigned to the medical department at all times when patients are present.

- H. **Services Provided by the CMHCC:** The CMHCC may provide the following services on behalf of the TDCJ, including but not limited to the following:
1. Developing statewide policies for the delivery of correctional health care;
  2. Communicating with the TDCJ and the legislature regarding the financial needs of the correctional health care system;
  3. In conjunction with the TDCJ, monitoring the expenditures of UTMB and the TTUHSC to ensure those expenditures comply with applicable statutory and contractual requirements;
  4. Serving as a dispute resolution forum in the event of a disagreement relating to offender health care services between:
    - a. the TDCJ and UTMB or TTUHSC; or
    - b. UTMB and TTUHSC;
  5. Addressing problems found through monitoring activities by the TDCJ, UTMB and TTUHSC, including requiring corrective action if care does not meet expectations as determined by quality of care monitoring activities;
  6. Identifying and addressing long-term needs of the correctional health care system;
  7. Reporting to the Texas Board of Criminal Justice at the board's regularly scheduled meeting each quarter on the CMHCC's policy recommendations, the financial status of the correctional health care system, and corrective actions taken by or required of the TDCJ, UTMB or TTUHSC; and
  8. Upon approval and in coordination with the TDCJ, the CMHCC may contract with an individual or firm for a biennial review of, and report concerning, expenditures under the correctional managed health care plan. The review must be conducted by an individual or firm experienced in auditing the state's Medicaid expenditures and other medical expenditures.
- I. **Medical Transportation:** The TTUHSC shall provide or arrange for EMS transportation of patients to hospitals based on an assessment and clinical evaluation by a qualified health care professional. The TDCJ will be responsible for transportation by chain bus or other non-EMS transportation services.

1. For transfer of inpatients between a TDCJ infirmary or regional medical facility and a hospital, EMS transportation shall be routinely provided.
  2. TDCJ transportation may be utilized for inpatient transfers provided that:
    - a. offenders transferring from one inpatient facility to another inpatient facility shall be assessed by the sending physician and/or mid-level practitioner;
    - b. documentation charted or noted that the offender is not anticipated to require medical intervention or assessment while enroute; and
    - c. the transport time by TDCJ van is less than three hours.
  3. If the criteria for TDCJ transport in paragraph 2 (a) and (b) is met, but the transport time is greater than three hours, the request for TDCJ transport shall be referred to the TDCJ Health Services Liaison for review and decision.
- J. **Privately Operated Facilities of TDCJ:** The TTUHSC shall provide health care services in support of TDCJ's privately operated correctional facilities and State Jail facilities listed in Exhibit D in accordance with the terms of this Contract.
- K. **Elective Cosmetic Surgery:** No proceeds from this Contract shall be used to pay for elective cosmetic surgery without prior written approval of the TDCJ Division Director for Health Services.
- L. **Employee-Related Health Care Services:** The TTUHSC, upon the employee's request, shall provide TDCJ employee health services to the extent required by state law and the General Appropriations Act, Article V, Rider 14, 82nd Legislature, 2011. Such health services include:
1. Immediate medical attention to TDCJ employees injured in the performance of their duties on TDCJ units.
  2. Medical attention and hospitalization by correctional medical staff and the correctional hospital facilities or payment of necessary medical expenses for employees injured while performing the duties of any hazardous position which is not reimbursed by worker's compensation and/or TDCJ employees' state insurance, if specifically directed to do so by the TDCJ.

3. Tuberculosis ("TB") screening for current employees seeking voluntary testing or current employees who have suffered occupational exposure. Hepatitis B vaccination will be provided to those employees who have suffered occupational exposure as per Blood Born Pathogen Exposure Control Plan Policy B14.27. Separate interagency contracts exist between the TTUHSC and the TDCJ for employee TB screening for newly hired correctional officers.
  4. For potential TB occupational exposure, an initial TB screening (skin test) and if indicated, referral to the Department of State Health Services or the employee's private physician for follow-up care.
  5. For medically determined HIV/HBV/HCV Occupational Exposure, TDCJ employees will receive pre- and post-test counseling and testing at the unit of assignment. Prophylaxis medications will be provided when indicated. Payment for staging and/or dispensing of prophylaxis medication is the responsibility of TDCJ.
- M. **Infectious Waste:** The handling of infectious waste will be in accordance with established Center for Disease Control (CDC) protocols and Texas Department of State Health Services standards.
- N. **Utilization Review and Management:** The TTUHSC, with the advice and counsel of physicians and other health care professionals, shall ensure the establishment of a review program, which implements procedures for the efficient use of resources, consistent with state and federal law and the Offender Health Services Plan, for the rendition of Health Care. The program may include review of elective referrals, offsite utilization, health care case management, utilization management studies, emergency services, and hospital admissions on a retrospective, concurrent and prospective basis. Copies of written review procedures shall be filed with the TDCJ Health Services Division and the CMHCC.
- O. **Credentialing:** The TTUHSC shall require of its providers and any subcontractors they utilize, that all health care professionals meet applicable State of Texas licensure, certification and registration requirements. Current credentialing documentation and verification shall be maintained at each facility, consistent with accreditation standards and made available for inspection by the CMHCC or the TDCJ upon request. The TTUHSC shall immediately notify the TDCJ Health Services Division and the CMHCC of any restrictions placed on a health care professional's license by a Licensing Board prior or

subsequent to hire, and any final internal or external disciplinary action (excluding peer reviews) taken against the professional. The TTUHSC will not hire or maintain health care providers whose licenses restrict them to practice only in correctional institutions. Health care staff shall not be employed at a TDCJ institution unless they pass TDCJ security clearance procedures. Decisions from the TDCJ on security clearances shall be provided within a reasonable time of submission of the required information to the TDCJ, unless the parties mutually agree to extend the timeframe. Should the security clearance require more than five business days, the TTUHSC and the TDCJ Division Director for Health Services will be notified. In the event that there is a disagreement between the TTUHSC and the TDCJ relating to a security clearance, the matter shall be referred to the TDCJ Division Director for Health Services for review and decision.

- P. **Human Resource Policies:** The parties acknowledge that the responsibility for personnel issues to include human resource policies, personnel selection and promotion, disciplinary procedures, compensation policies and other employment-related matters rests with the employing agency and shall be governed by all applicable state and federal laws and employing agency policies and rules. Health care staff shall comply with all other TDCJ policies and rules while on TDCJ premises.
- Q. **Capital Assets:** The parties hereby acknowledge that the TDCJ and the TTUHSC are each subject to the provisions of Texas Government Code Chapter 403, Subchapter L. The parties further acknowledge that each entity is responsible for compliance with the rules and procedures for accounting for state property promulgated by the Comptroller of Public Accounts pursuant to that law, including the proper recording of Capital Assets on the State Property Accounting (SPA) System. The parties agree to abide by Capital Asset value limitations and definitions established for the State Property Accounting System and nothing in this Contract changes the reporting thresholds established by the SPA System.
1. The transfer of Capital Assets used in the delivery of medical care (documented by electronic transfer documents from the TDCJ to the TTUHSC) was effectuated by the Contract between the CMHCC and the TDCJ dated August 24, 1995 and which expired August 31, 1997. The Capital Assets originally transferred or subsequently transferred under this prior contract are for the beneficial use of the State of Texas and shall not be used for any other purpose. Such Capital Assets may be transferred as needed among TDCJ facilities but shall not be removed from TDCJ premises. The TTUHSC shall notify TDCJ

Health Services of the nature of use of such Capital Assets for benefit of any state entity or individual other than TDCJ. Use of such Capital Assets shall not negatively impact on provision of services to the TDCJ as provided in this Contract.

2. Subject to state inventory reporting requirements, annually in September, the TTUHSC shall submit to the TDCJ a complete list of Capital Assets at each location including description and property number. Changes to the most recent inventory, consisting of the lists of purchased or transferred equipment and notifications for disposal of equipment shall be submitted to the TDCJ quarterly.
  3. The TTUHSC retains accountability for Capital Assets and responsibility for maintenance, repair or replacement as may be necessary. Any maintenance and repair issues that may arise relating to Capital Asset covered under terms of the construction warranty documents shall be handled in accordance with procedures of the TDCJ Facilities Division's warranty office.
  4. In the event that a current contract with the TTUHSC is canceled, those Capital Assets originally transferred, subsequently transferred or purchased with proceeds from this Contract shall be identified through the State Property Accounting System by location code and transferred to the TDCJ in accordance with procedures for inter-agency transfer of property. In the event of a dispute over the transfer of one or more items of property, the parties shall refer the matter to the Comptroller of Public Accounts for resolution.
  5. It is understood that costs related to the acquisition, maintenance and replacement of Capital Assets referenced in this section are included in the financial reporting required by Article IV of this Contract including the allocated share of costs for such Capital Assets benefiting programs other than the TDCJ. The remaining share of such costs shall be allocated to those programs benefiting from the Capital Assets.
- R. **Medical Records:** All Medical Records of TDCJ Offenders receiving Health Care under this Contract are the property of the TDCJ. The TTUHSC has the right to retain copies of such Medical Records. The TDCJ will designate a custodian of all Medical Records with the designee's approval and/or consent.
1. The TTUHSC shall include in its subcontracts provisions that allow TDCJ access, on request and at no cost, to hospital

medical records, that shall be made part of the offender's permanent medical file, including the patient discharge summary, subject to medical confidentiality laws. Any subcontractor which refuses to provide records on request shall be referred to the TTUHSC for consideration and action.

2. The designated custodian of Medical Records is responsible for the maintenance of Medical Records and responses to requests and subpoenas for Medical Records. Such maintenance and responses shall be in accordance with the policies and procedures promulgated as a result of the Joint Health Care Policies and Procedures Committee and applicable state and federal law.
  3. The Electronic Medical Record (EMR) system is operated and managed by the designated custodian of Medical Records and shall be utilized by the TTUHSC. The designated custodian shall ensure TTUHSC has access to the EMR system as well as the following:
    - a. Provide adequate and timely updates for software, networking, and server.
    - b. Provide adequate and timely technical support.
    - c. Assure EMR system is medico-legally compliant.
    - d. The TTUHSC agrees to work cooperatively in planning activities related to system infrastructure, network, hardware and software upgrades or changes that may be necessary to support the effective and efficient operation of the EMR system. The TTUHSC agrees to proportionately share the costs of such upgrades provided that the TTUHSC has agreed in advance to the changes and the costs.
  4. New and revised Medical Record forms and policies are to be approved by the Medical Director's Committee.
  5. The designated custodian of Medical Records shall provide complete EMR access subject to existing license, which includes the ability to enter clinical notes to all private facilities such as Intermediate Sanction Facilities, Pre-Parole Transfer Facilities or other secure facilities that have custody of TDCJ offenders.
- S. **Health Care Confidentiality:** In order to ensure that provisions of state and federal law relating to the confidentiality of health care information are met, the parties herein acknowledge that:

1. The TTUHSC agree to provide protected health information (PHI) to CMHCC authorized representatives. The TDCJ Medical Director or Medical Director's designees are authorized representatives of the CMHCC for the purpose of requesting and receiving, without limitation, health care information from the TTUHSC. Other TDCJ employees may have access to PHI as permitted in situations outlined and authorized by 164.512 of the Health Insurance Portability and Accountability Act (HIPAA) and as set forth in paragraphs 2 and 3 below.
2. Disclosure of protected health information of offenders in the custody of the TDCJ between the parties is required for the following purposes within the correctional system:
  - a. Use in determining medically appropriate classification, housing and job assignments;
  - b. Use in determining an offender's ability to participate in programmatic activities;
  - c. Use in the processes involved in monitoring the delivery of health care services, including both access to health care and the quality of health care;
  - d. Use in the investigation and response to grievances and complaints from individual offenders regarding their health care services;
  - e. Use in the investigation and response to complaints from third parties about the health care services provided to offenders;
  - f. Use in preventive medicine monitoring and reporting activities;
  - g. Use in ensuring appropriate continuity of care planning is available for offenders;
  - h. Use in qualifying offenders for release consideration under provisions of state law related to medically recommended intensive supervision;
  - i. Use in responding to offender emergency medical needs; and,
  - j. Use in providing health care to offenders.
3. The parties further agree that the disclosure of protected health information of offenders in the custody of the TDCJ is necessary for:
  - a. The provision of health care to TDCJ's offenders;
  - b. The health and safety of the TDCJ offender or other offenders;

- c. The health and safety of the officers or employees of or others at the correctional institutions;
  - d. The health and safety of such individuals and officers or other persons responsible for transporting of inmates or their transfer from one institution, facility, or setting to another;
  - e. Law enforcement on the premises of the correctional institution;
  - f. The administration and maintenance of the safety, security and good order of the correctional institution;
  - g. The provision of offender emergency medical care; and
  - h. The need to obtain discoverable information as permitted by HIPAA with respect to judicial and administrative proceedings.
4. The parties further agree that any protected health information shared among the parties pursuant to this contract may not be further disclosed to other parties except as permitted by law. Liability for inappropriate disclosure of protected health information rests with the party that inappropriately disclosed the information.
5. Any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by the TTUHSC in the performance of its obligations under this Contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the TDCJ by the TTUHSC upon completion, termination or cancellation of this Contract. The TTUHSC may, at its own expense, keep copies of all its writings for its personal files. The TTUHSC shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the TTUHSC's obligations under this Contract without prior written consent of the TDCJ; provided, however, that the TTUHSC shall be allowed to use non-confidential materials for writing samples in pursuit of the work. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare, derivative works, or otherwise use the works.
- T. **Continuity of Care:** The TTUHSC, including its components, affiliates and subcontractors shall abide by the disclosure provisions of Chapter 614, Health and Safety Code, regarding offenders who require continuity of care including accessing and sharing release of medical and/or psychiatric information as authorized by Chapter 614, Health and Safety Code, at the time of intake, prior to and after the offender's release from custody.

The TTUHSC shall ensure that all offenders who require continuity of care are identified with a PULHES score indicator of 4 and will be reported to the Texas Correctional Office On Offenders With Medical or Mental

Impairments (TCOOMMI). Upon request from the TCOOMMI, the TTUHSC will provide information related to the offender's current medical status, to be utilized by the TCOOMMI staff in coordinating post-release placement and care.

U. **Medically Recommended Intensive Supervision:** Subject to federal and state law, the TTUHSC shall gather and report medical information necessary to facilitate the release of offenders on medically recommended intensive supervision to the TCOOMMI. Requests for medical summaries in response to an application for medically recommended intensive supervision shall be responded to within five working days. The TTUHSC's designated physician shall serve as a consultant to the Parole Board to facilitate the Parole Board's comprehension of the clinical information submitted by the TTUHSC. The TCOOMMI shall provide monthly reports of the status of requests for medical summaries to the TTUHSC Medical Director or Medical Director designee for review.

1. The TCOOMMI shall inform the TTUHSC of offenders who are approved for Medically Recommended Intensive Supervision. The TTUHSC shall in turn provide information related to the offender's current medical status to be utilized by TCOOMMI staff in coordinating post-release placement and care. Any changes in the offender's condition since the date of medical summary completion are to be reported.
2. In the event that a TDCJ Offender patient is an inpatient at a free world hospital at the time they become no longer eligible for services under this Contract, the TDCJ, TCOOMMI and the TTUHSC will work cooperatively to ensure the transfer of responsibility for continued care of the TDCJ Offender patient. For the purposes of the provision, "no longer eligible" means TDCJ Offenders:
  - a. who have discharged their sentence; been placed on mandatory supervision; been approved for regular parole; or have been approved for medically recommended intensive supervision release; and
  - b. cannot be transferred to their designated release plan due to their medical condition.

V. **Medical Research:** Medical research involving TDCJ offenders shall be conducted in accordance with the TDCJ Agency Research policy AD-02.28.

- W. **Emergency Preparedness and Response:** The TTUHSC shall participate in emergency preparedness training activities of the TDCJ. The TTUHSC shall also ensure that a TTUHSC mental health staff person participates as a bona fide member of the TDCJ hostage negotiation teams.
- X. **Corrections Medication Aides Training:** The TDCJ, in cooperation with the TTUHSC and the UTMB, shall develop and implement a training program for corrections medication aides that uses a curriculum specific to administering medication in a correctional setting that is approved by the Texas Department of Aging and Disability Services (DADS).

### Article III PAYMENT PROVISIONS

- A. **Payment Schedule:** The TDCJ agrees to pay the TTUHSC as follows:

Payments for all services at the first of each quarter of the fiscal year, to be wire transferred on or before the tenth working day of the first month of each quarter, based on appropriations listed in Article V.

In Fiscal Year 2012: three payments as outlined in the schedule below:

<u>Date Payment is Due</u>	<u>Amount Due</u>
December 14, 2011	\$22,412,893.00
March 14, 2012	\$22,659,189.00
June 14, 2012	\$22,659,187.00
<b>Total FY 2012</b>	<b>\$67,731,269.00</b>

In Fiscal Year 2013: four payments as outlined in the schedule below:

<u>Date Payment is Due</u>	<u>Amount Due</u>
September 14, 2012	\$22,474,299.00
December 14, 2012	\$22,227,327.00
March 14, 2013	\$22,721,268.00
June 14, 2013	\$22,721,268.00
<b>Total FY 2013</b>	<b>\$90,144,162.00</b>

#### Strategy Funding FY2012-2013 Biennium

	<u>FY 12</u>	<u>FY 13</u>	<u>Total</u>
C1.7	\$54,370,960.00	\$54,370,960.00	\$108,741,920.00
C1.8	\$25,291,922.00	\$25,291,922.00	\$ 50,583,844.00
C1.9	\$10,481,280.00	\$10,481,280.00	\$ 20,962,560.00
<b>Total</b>	<b>\$90,144,162.00</b>	<b>\$90,144,162.00</b>	<b>\$180,288,324.00</b>

**B. Appropriation Rider Acknowledgements:** The parties acknowledge that the appropriations for correctional health care include appropriation riders as referenced below:

1. The TDCJ is required to submit quarterly to the Legislative Budget Board (LBB) and the Office of the Governor a report detailing:
  - a. correctional managed health care actual and projected expenditures for unit and psychiatric care, hospital and clinical care, and pharmacy;
  - b. health care utilization and acuity data; and
  - c. other health care information determined by the Office of the Governor and the Legislative Budget Board.
2. The TTUHSC shall provide the TDCJ with necessary documentation to fulfill the reporting requirements contained in this section.
3. The TTUHSC shall provide inpatient and outpatient hospital and clinical care services through contract providers for offenders in the custody of the TDCJ at a rate not to exceed 100% of what would be paid for similar services according to the Medicare reimbursement methodology.

The TTUHSC may pay a rate in excess of Medicare reimbursement rates after submission through the TDCJ and only after receiving prior written approval from the Legislative Budget Board.

4. Managed Health Care Operational Shortfalls
  - a. If deemed necessary by the TDCJ, appropriations may be transferred into Strategies C.1.7, Managed Health Care – Unit and Psychiatric Care, C.1.8, Managed Health Care – Hospital and Clinical Care, and C.1.9, Managed Health Care – Pharmacy, with prior approval of the LBB. The request shall be considered approved unless the LBB issues a written disapproval within thirty calendar days of receipt of the recommendation prepared by the LBB staff.
  - b. The TDCJ may transfer appropriations made in Strategies C.1.7, Managed Health Care – Unit and Psychiatric Care, C.1.8, Managed Health Care – Hospital and Clinical Care, and C.1.9, Managed Health Care – Pharmacy, for Fiscal Year

2013 to Fiscal Year 2012 with prior approval of the LBB. The request shall be considered approved unless the LBB issues a written disapproval within thirty calendar days of receipt of the recommendation prepared by LBB staff.

5. Transferability

- a. The TDCJ shall not transfer any funds between Strategies C.1.7, Managed Health Care – Unit and Psychiatric Care, C.1.8, Managed Health Care – Hospital and Clinical Care, and C.1.9, Managed Health Care – Pharmacy, without prior approval of the LBB. The request shall be considered approved unless the LBB issues a written disapproval within thirty calendar days of receipt of the recommendation prepared by the LBB.
- b. This transferability limitation extends to the TTUHSC and UTMB upon receipt of funding from the TDCJ.

C. **Basis for Payments:** The parties understand and agree that the payments outlined herein cover the services outlined in this Contract for only those units listed in Exhibit D of this Contract. The provision of services for any significant expansion of population beyond that contemplated in Exhibit D may require additional payment and prior written agreement. The parties further understand and agree that this Contract is entered into with an understanding that the level of services required shall be consistent with the accepted national standards of care at the time of execution of this Contract. Any significant changes in the national standards of care as promulgated and approved by national authorities, such as the National Institute of Health or the U.S. Centers for Disease Control and Prevention shall be cause to renegotiate the terms and amounts of this Contract. The payment amounts listed above may be further adjusted to a mutually agreed amount and the contract amount in Article V may be increased or decreased by amending this Contract should the volume, type or intensity of the Health Care services required to be provided by the TTUHSC increase or decrease significantly during the term of this Contract, as a result of, but not limited to, new or revised TDCJ policies, procedures or regulations, changing conditions or court mandates.

D. **Requirement for Fiscal Estimate for Additional Services:** If during the period this Contract is in effect, additional services beyond those contemplated by the Contract are requested, the TDCJ and the TTUHSC agree to work cooperatively to develop a fiscal estimate indicating the anticipated cost and/or savings related to the request and

identifying a source(s) of funding for the additional services. At a minimum, the methodology, cost categories and expenditure detail that is agreed upon for reporting actual costs for the base level of services defined in this Contract shall be used to estimate costs for additional services, as applicable.

- E. **Timely Payments Required:** The TDCJ and the TTUHSC agree that failure by the TDCJ to make payments in a timely manner and as agreed to by TTUHSC shall immediately relieve TTUHSC of all contractual obligations directly and indirectly associated with this Contract.
- F. **Reimbursement for Natural or Manmade Catastrophe:** In the event of a Natural or Manmade Catastrophe, the TTUHSC shall be reimbursed by the TDCJ for all actual Health Care expenses specifically related to the catastrophe and provided to the TDCJ's Offenders and Employees provided the TDCJ has reviewed and verified the expenses and certified the event as a Natural or Manmade Catastrophe.
- G. **Unemployment and Worker's Compensation Reimbursements:** The TTUHSC shall be responsible for paying Unemployment and Worker's Compensation claims for its employees.
- H. **Cancellation due to Legislative Action:** Should the legislature fail to provide funding for, or materially amend the statute establishing correctional managed health care, any of the parties may initiate cancellation of this Contract.
- I. **Material Changes Cause for Cancellation:** The undersigned parties agree that any material change in the underlying rationale for this Contract beyond the control of the TTUHSC, including but not limited to legislative mandates, court mandates, funding decisions, natural or manmade catastrophes, shall, at the sole election of the TTUHSC, be cause to discharge the TTUHSC of its obligations to perform Health Care Services under this Contract. The TTUHSC shall provide 180 days written notice of Contract termination as outlined in Article XI of this Contract.
- J. **Change in Appropriations:** The undersigned parties understand and agree that payment for services outlined in this Contract are based on appropriations for Managed Health Care – Unit and Psychiatric Care (Strategy C.1.7), Managed Health Care – Hospital and Clinical Care (Strategy C.1.8) and Managed Health Care – Pharmacy (Strategy C.1.9) found in HB 1, 82nd Legislature, Regular Session, 2011. Any change in the appropriations amounts made by the legislature, by

budget execution or other action beyond the control of the TDCJ shall be cause for this Contract to be renegotiated and/or canceled by any of the parties.

**K. Restrictions on Expenditures:**

1. All expenditures made from funds allocated through this Contract to the TTUHSC shall be for services provided to the TDCJ under the terms of this Contract. The TDCJ and the CMHCC shall through their contract monitoring procedures ensure that the TTUHSC properly allocate expenditures and segregate funding sources for TDCJ and non-TDCJ Managed Health Care programs.
2. While the parties acknowledge that once funds have been earned by the TTUHSC under the terms of this Contract, such funds are considered local funds, the parties agree that all expenditures will be made in accordance with the State Comptroller's guidelines for utilization of general revenue funds. These guidelines include definitions for allowable and unallowable expenditures of general revenue funds. The parties further agree to the following exceptions:
  - a. On a case-by-case basis, the TTUHSC may request that additional exceptions to the restrictions on expenditures be approved by the TDCJ.
  - b. In no event may the funds earned under this Contract be expended for the following items, including but not limited to:
    - 1) food items for employees or prospective employees, other than payments for meals made as a part of a travel reimbursement in compliance with state travel regulations;
    - 2) flowers or decorative plants;
    - 3) gifts and awards for employees, other than service awards subject to limitations set by the Texas Government Code, Section 2113.201;
    - 4) costs related to staging employee celebrations such as retirement parties, special recognitions, graduations, promotions or similar such events.
3. The TTUHSC shall maintain detailed payroll records for each employee that allow for an accurate allocation of payroll costs between TDCJ and non-TDCJ contracts based on actual hours

worked. The TDCJ and TTUHSC shall include procedures for reviewing and testing those allocations in the financial monitoring activities of the CMHCC.

- L. **Notice and Review of Certain Spending Initiatives:** The TDCJ shall be provided at least 60 days advance notice of spending initiatives undertaken by any of the parties that are projected to represent a significant cost increase to the program. For the purposes of this paragraph, a significant cost increase is defined as an amount over \$1,000,000. Examples of such initiatives include, but are not limited to across the board salary increases for staff, purchases of new equipment, or changes in procurement practices. During the 60-day period following notice to the TDCJ, TDCJ staff shall review the supporting detail and rationale for the initiative. At its option, TDCJ staff may elect to refer such an initiative to the CMHCC for review at its next regularly scheduled meeting. If an initiative is referred to the CMHCC, the implementation of the initiative shall be postponed until completion of the CMHCC review.
- M. **Right to Audit Provision Required by Government Code 2262.003:** The parties understand that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, the TDCJ and the CMHCC or any successor agency, to conduct an audit or investigation in connection with those funds. The parties further agree to cooperate fully with the above parties in the conduct of the audit or investigation, including providing all records requested. The parties shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the TTUHSC and the requirement to cooperate is included in any subcontract it awards.
- N. **Studies Required by the Legislature:** The TDCJ together with the Health and Human Services Commission, shall conduct a study using the Clinical Acuity Rating System to address disease specific and healthy populations and to determine if housing similarly diagnosed offenders together may improve care and reduce costs. The TDCJ shall report the findings of the study to the Legislative Budget Board no later than December 1, 2012, as required by HB1, 82nd Legislature, Regular Session, 2011, Article V, Rider 61.

Article IV  
FINANCIAL REPORTING AND MONITORING PROVISIONS

- A. **Financial Reports:** The TDCJ and the CMHCC shall develop and distribute financial reports detailing all expenditures made to provide services under this Contract and reflecting the actual costs of providing health care. The TTUHSC shall provide information necessary to complete financial reports. Such reports include:
1. Monthly reports detailing all actual expenditures made to provide services required by the Contract including information such as, but not limited to:
    - a. A standard financial report summary (summary level information totals and by the TTUHSC);
    - b. Supporting Detail: Salary/Benefit Costs by Unit/Department;
    - c. Supporting Detail: Operating Costs by object of expense;
    - d. Supporting Detail: Capital Asset Acquisitions;
    - e. Supporting Detail: Payments to Freeworld Providers (Physician/Hospital/EMS costs); and
    - f. Supporting Detail: Payments to UTMB Physicians and Hospital.
  2. Monthly reports detailing all actual revenue applied to the contract including both payments from the contracts and benefit reimbursements made directly to the TTUHSC.
  3. Reports identifying all personnel assigned to the TDCJ contracts who also provide services for other TTUHSC contracts, with information on the allocation of those costs and methods used to verify the accuracy of those allocations.
  4. Reports, on at least a quarterly basis, detailing historical and current payments compared with actual costs and revenues.
  5. Quarterly reports to the LBB and the Office of the Governor.

6. Completion of schedules relating to the Annual Financial Report meeting the requirements of Texas Government Code, Section 2101.011 as directed by the Comptroller of Public Accounts.
  7. Other financial reports required by the TDCJ or the CMHCC.
- B. Reporting Formats and Schedules:** The TDCJ, the CMHCC and the TTUHSC agree to continue to work cooperatively to identify reporting data requirements, to adopt standardized report formats and to comply with schedules for reporting information to the TDCJ and the CMHCC. The CMHCC shall provide detail required to the TDCJ. Monthly financial data is due to the TDCJ and the CMHCC from the TTUHSC not later than the 30th day of the following month, except that the final year end closeout report shall be due to the CMHCC not later than 60 days following the end of the fiscal year.
- C. Financial Monitoring:** The TDCJ and the CMHCC, with the cooperation of the TTUHSC and subcontractors, shall conduct monitoring activities designed to verify the accuracy of data included in financial reports provided to the CMHCC and to enforce the financial provisions of this Contract. Such activities shall include, but not be limited to:
1. Provisions for the TDCJ and the CMHCC to have access to a portion of the university internal auditor resources to assist the CMHCC in risk assessment, testing and expense verification activities.
    - a. The minimum number of audit hours made available to the CMHCC by UTMB will be 500 hours per year.
    - b. The minimum number of audit hours made available to the CMHCC by the TTUHSC will be 150 hours per year.
  2. Procedures for testing samples of expenditures to review and verify supporting documentation.
  3. Provisions for TDCJ staff and CMHCC staff, internal auditors or agents of the TDCJ and/or the CMHCC, to access, test and validate transactions charged to the TDCJ's managed health care contracts.

4. Summaries of all financial monitoring activities and copies of internal audit reports relating to the correctional health care program will be provided to the TTUHSC, the TDCJ and the CMHCC as a part of the routine financial reports issued by the TDCJ and the CMHCC.

#### Article V CONTRACT AMOUNT

In the absence of a Natural or Manmade Catastrophe, or unless provided otherwise in this Contract, the amount of this Contract shall not exceed \$157,875,431.00 for the period of December 1, 2011 through August 31, 2013.

#### Article VI OFFENDER POPULATION

The Texas Department of Criminal Justice shall have responsibility for placement of offenders. This will be accomplished in conformity with the governing statute, the Texas Government Code, Chapter 494, and existing classification criteria. The TDCJ State Classification Committee shall have sole responsibility for the placement of offenders in the units, provided however, that the decision to admit or discharge an offender patient to/from a regional medical facility, infirmary or hospital is the sole responsibility of the treating physician. The TDCJ shall make a good faith effort to initiate the review, classification and transfer of offender patients from infirmary beds upon notification that the offender patient is able to return to the population. Concerns about delays in transfer of discharged patients from an infirmary shall be communicated to the TDCJ Division Director for Health Services.

#### Article VII INDEPENDENT CONTRACTORS

Nothing contained herein shall be construed as creating the relationship of employer and employee between the TDCJ, its employees, agents and contractors and the TTUHSC, its employees, agents and contractors. In carrying out the terms of this Contract, The TTUHSC shall select its own employees and Participating Providers.

#### Article VIII QUALITY OF CARE MONITORING

- A. **Cooperation in Quality of Care Monitoring:** The parties hereby acknowledge that pursuant to Texas Government Code, Section 501,

Subchapter E, the TDCJ, the CMHCC and TTUHSC are responsible for establishing procedures for monitoring the quality of care delivered by the health care providers and for enforcing compliance with contract provisions, including requiring corrective action if care does not meet expectations as determined by quality of care monitoring activities as required by Section 501.148 (a) (5) and Section 501.150. The parties further acknowledge and agree that the delivery and monitoring of health care within the Texas correctional system requires coordinated and cooperative efforts from all parties, including subcontractors.

1. The TDCJ and the TTUHSC shall cooperate in monitoring quality of care.
2. The TDCJ shall monitor the quality of care delivered by the health care providers, including investigating medical grievances, ensuring access to medical care and conducting periodic operational reviews of medical care provided at its units.
3. The clinical and professional resources of the health care providers shall be used to the greatest extent feasible for clinical oversight of quality of care issues. The TDCJ may require the health care providers to take corrective action if the care provided does not meet expectations as determined by quality of care monitoring.
4. The TDCJ and the TTUHSC shall communicate the results of their monitoring activities, including a list of and the status of any corrective actions to the Committee and to the Texas Board of Criminal Justice.
5. To ensure the effectiveness and efficiency of such efforts, the TDCJ, in coordination with and in consideration of input from the TTUHSC and the CMHCC, has applied key principles involved in monitoring the correctional health care system, including monitoring operational results to determine overall performance or compliance. These principles include:
  - a. Definitions of the roles and responsibilities of the TDCJ, the CMHCC and the TTUHSC in regard to monitoring activities;
  - b. Designation of formal notification mechanisms for communicating and sharing information related to monitoring activities, results and trends;

- c. Formal reporting mechanisms for communicating the results of monitoring activities to the CMHCC, the TDCJ and to the TTUHSC;
  - d. Delineation of the timeframes for review and comment on monitoring reports and for filing corrective action plans in response to those reports;
  - e. Identification of specific self-monitoring activities intended to maximize the clinical oversight of quality of care issues through the clinical and professional resources of the health care providers and the appropriate means of sharing the results of those activities among the parties;
  - f. Requirements that the TTUHSC monitor all subcontractors with whom the TTUHSC contracts for service and report the results of such monitoring to the TDCJ and the CMHCC. Performance standards and monitoring criteria shall meet as a minimum, performance standards set forth in this Contract for the TTUHSC. Performance standards and monitoring criteria shall be included in each subcontract executed by the TTUHSC under this Contract, and provisions for financial remedies and cancellation of the subcontract if the performance measures are not attained by the subcontractor;
  - g. Definition of the roles of the TTUHSC in assisting the TDCJ and responding to the TDCJ's responsibilities related to the investigation of medical grievances, ensuring access to medical care and conducting periodic operational reviews of medical care provided at its units; and
  - h. Provisions for follow-up reporting, verification and enforcement of corrective actions.
- B. **Accreditation:** The TDCJ and the TTUHSC agree to obtain and maintain ACA accreditation as required in Article IX.A in accordance with Exhibit E. The TDCJ agrees to pay the entire ACA accreditation or re-accreditation fee for the facility.
- C. **Health Care Provider Credentials:** All health care providers must have and maintain appropriate licensure or certification as outlined in Article II.O of this Contract. Verification of current credentials must be maintained and made available upon request of the CMHCC or the TDCJ Health Services Division.

- D. **Operational Review:** All unit health care facilities are subject to routine or special Operational Review inspections conducted to ascertain compliance with health care policies. The TDCJ's Health Services Division will develop and implement a system-wide assessment mechanism for Operational Review results and perform trend analyses of these results to identify recurring issues and to identify at risk units for special review. Following each Operational Review, the status of compliance with the policies shall be documented in a written report provided to the TTUHSC. Corrective action plans shall be developed for any identified deficiencies below 80% and submitted to the TDCJ Health Services Division Director for approval in accordance with established procedures.
- E. **Access to Care Reporting:** Access to care shall be afforded by the TDCJ and the TTUHSC in accordance with approved health services policies and procedures. All unit health care facilities shall monitor access to care indicators monthly in accordance with approved methodologies. A rate of compliance below 80% for any indicator shall be cause for the TTUHSC Medical Director or designee to review the indicator and initiate corrective action as appropriate. At the discretion of the TDCJ Health Services Division Director, or upon request of the TTUHSC or the CMHCC, any unit may be required to report access to care monitoring results on a bi-weekly basis until at least 90 days of compliance has been demonstrated. All newly opened units or units with a change in the health care vendor shall be monitored on a bi-weekly basis until demonstrated compliance is documented for at least 90 days.
- F. **Quality Improvement Plan:** All unit health care facilities are responsible for developing and maintaining an on-going self-monitoring program as outlined in the Quality Improvement Plan adopted by the CMHCC.
- G. **Staffing Levels:** Each unit health care facility shall maintain a written staffing plan that assures a sufficient number of qualified health care personnel of varying types necessary to provide health care services. Written unit staffing plans will be made available to the TDCJ Health Services Division staff and the CMHCC upon request. The staffing plans will indicate the scheduled number of hours and days of operation and the number and type of personnel assigned. Any permanent material changes to the hours, days or type of personnel assigned to a facility shall require notice as soon as practical under the circumstances to the TDCJ and the CMHCC. During the notice period, an objection may be filed with the CMHCC if the parties do not agree on the change to the staffing plan. If an objection is filed, implementation of the proposed change shall be postponed until

completion of the review by the full CMHCC. The parties to this Contract acknowledge that the numbers and types of health care professionals required at a facility depend upon a number of factors, including but not limited to, the size of the facility, the type and scope of services delivered, the needs and medical acuity of the offender population and the organizational structure and systems employed. The parties further agree that the appropriate measure of adequacy for a facility staffing plan is compliance with the performance requirements outlined in this Article. Should a facility fail to meet those performance requirements, corrective actions sought by the TDCJ and the CMHCC may include requesting that an evaluation of the adequacy of the staffing levels be prepared and submitted to the TDCJ and the CMHCC for review. A staffing expert may be hired to evaluate staffing adequacy by any of the parties to this Contract, at that party's discretion and expense. Such evaluations shall be shared and considered by the parties. In the event agreement on staffing levels cannot be reached, the matter shall be referred to the CMHCC for resolution in accordance with Article X of this Contract.

- H. **Peer Review Committees:** The CMHCC shall require that the TTUHSC's Medical Director appoint an appropriately credentialed TDCJ Health Services representative designated by the TDCJ Director for Health Services as an ad hoc member to the TTUHSC's peer review committees which relate directly to health and medical services provided to TDCJ patients, with the exception that the TTUHSC's Medical Director may appoint a mutually agreed to independent third party designee as an ad hoc member in the event that there is a reasonable possibility of a conflict of interest between the two parties. Disputes over whether a conflict of interest between the parties exists can be referred to the CMHCC, but the decision of the CMHCC is not binding on the TTUHSC. The TDCJ appointee or independent third party designee to the peer review committee shall abide by the TTUHSC's various bylaws, rules, regulations and policies governing the institution.
1. The TTUHSC shall provide the TDCJ representative or independent third party designee access to a written summary of peer review matters to include any corrective action taken for those peer review committee cases for which the TDCJ representative or independent third party physician designee is an ad hoc member so long as the TTUHSC has deemed that no conflict of interest exists. Subject to the TTUHSC's due process requirements, the TDCJ's representative may request corrective action be taken against the provider in question, including the removal from contact with TDCJ Offenders during the course of the peer review.

2. Disputes between the parties regarding corrective action and removal from treating patients will be referred to the CMHCC in accordance with this paragraph H, however all medical confidentiality provisions relating to the peer review findings and other confidential medical information shall remain in effect. Decisions of the CMHCC shall be binding on the parties.
- I. **Offender Grievances and Complaints:** The TTUHSC and the TDCJ recognize the need to respond to and track offender grievances and complaints in order to ensure prompt resolution of potential access to care or quality of care issues. The parties agree to review and respond to offender grievances and complaints in a timely manner, not later than 45 days from receipt. Inquiries from legislators or statewide elected officials shall normally be investigated and responded to within five work days and not later than ten work days. Copies of responses shall be provided to the TDCJ Health Services Division to close out the grievance/complaint file. Should it be necessary, the TTUHSC may request an extension of time to pursue further investigation or review of a grievance or complaint. The TDCJ shall require that the TTUHSC submit to the TDCJ Health Services Division and the CMHCC copies of any inquiries relating to the provision of health care services covered by this Contract from legislators, statewide elected officials and other state and federal agencies, officials or authorities and the responses to those inquiries. In the event that disputes arise regarding the timeliness of responses, the dispute resolution provisions in Article X of this Contract shall apply.
  - J. **Joint Committee Processes Required:** The CMHCC, through the TDCJ and the TTUHSC shall provide additional coordination and monitoring of health care services through participation in joint committees as outlined in Health Services Policy and Procedures. Meetings may be conducted through Poly Com services and/or telephone conference calls when applicable or appropriate.

## Article IX PERFORMANCE MEASURES

The parties agree to the following performance requirements throughout the term of this Contract:

- A. **Standards and Requirements:** The TTUHSC agrees to provide services which meet applicable federal and state constitutional and statutory requirements; applicable court mandates; and, performance measures as described in this Article.

1. Non-emergency inpatient hospital facilities must be certified by either Joint Commission on Accreditation of Health Organizations (JCAHO) or Medicare certification requirements.
2. The TTUHSC agrees to obtain and maintain accreditation with the American Correctional Association (ACA) in conjunction with TDCJ's schedule for unit reaccreditation and initial unit accreditation. The accreditation schedule is attached to this Contract as Exhibit E.

**B. Access to Care Measures:** The parties agree to provide access to care consistent with the following access to care indicators. Access to care measures are calculated monthly and reported on a quarterly basis through the System Leadership Council in accordance with the Quality Improvement Plan adopted by the CMHCC. For the purposes of this Contract, a compliance rate of 80% on each indicator is expected at each facility. Compliance rates of less than 80% will require corrective actions to be taken and may subject the facility to additional monitoring.

1. Dental Indicator #1: Each offender who submits a Sick Call Request for Dental Services will be physically triaged within 72 hours.
2. Dental Indicator #2: Each offender who submits a Sick Call Request for Dental Services will have their chief complaint documented in the health record at the time of triage.
3. Dental Indicator #3: Each offender who has been referred to a dentist (through nursing or dental triage) will be seen by the dentist within fourteen (14) calendar days of receipt of the Sick Call Request.
4. Mental Health Indicator #4: Each offender on outpatient status, who submits a Sick Call Request for Mental Health Services, will be physically triaged within 72 hours.
5. Mental Health Indicator #5: Each offender who submits a Sick Call Request for Mental Health Services will have the chief complaint documented in the health record at the time of triage.
6. Mental Health Indicator #6: Each offender on outpatient mental health status who has been referred to a qualified mental health professional for further evaluation and/or treatment is seen by a qualified mental health professional within fourteen (14) calendar days of physical triage.

7. **Medical Indicator #7:** Each offender who submits a Sick Call Request for Medical Services (whether nursing sick call or provider sick call) will be physically triaged within 72 hours.
8. **Medical Indicator #8:** Each offender who submits a Sick Call Request for Medical Services will have the chief complaint documented in the health record at the time of triage.
9. **Medical Indicator #9:** Each offender who has been referred to a physician, physician assistant or advanced practice nurse will be seen by a physician, physician assistant or advanced practice nurse within fourteen (14) calendar days of receipt of the Sick Call Request.

**C. Health Care Outcome Measures:** The parties agree to provide services to meet the following health care outcome performance expectations. Unless noted otherwise, these measures shall be reported quarterly to the TDCJ and the CMHCC.

1. **Percent of Eligible Facilities accredited by ACA:** Calculated as the number of facilities accredited by ACA divided by the number of facilities eligible for ACA accreditation in accordance with the provisions of this Contract times 100. The performance expectation of this measure is 100% of the facilities designated in Exhibit E.
2. **Percentage of Sustained Offender Grievances:** Calculated as the number of Step One and Step Two grievances about health care services found in favor of the offender in the past 12 months divided by the total number of Step One and Step Two offender grievances about health care times 100. The performance expectation for this measure is that the percentage of sustained offender grievances is 10% or less for Step One and 6% or less for Step Two.
3. **Percentage of Unit-Level Provider Staff Vacancies:** Calculated as the number of vacant provider level positions (defined as physician, psychiatrist, dentist, physician's assistant, advance practice nurse, nursing and other allied health professional positions) assigned to facilities divided by the total number of provider level positions assigned to facilities times 100. The performance expectation for this measure is that the percentage of unit-level provider staff vacancies be 12% or less.

4. **Percentage of Medical Summaries Completed for Medically Recommended Intensive Supervision (MRIS) in a Timely Manner:** Calculated as the number of medical referral summaries completed and submitted to TCOOMMI within five days of receiving the request divided by the total number of requests for medical summaries received times 100. The performance expectation for this measure is that the percentage of medical summaries completed in a timely manner for MRIS consideration will exceed 95%.

D. **Legislative Performance Measures:** The TTUHSC shall collect and provide the TDCJ data required to report Legislative Performance Measures quarterly, and any additional measures as required by State Leadership offices.

E. **Remedy for Non-Performance:** The TDCJ shall monitor the TTUHSC's compliance with the terms of this Contract. In the event that the TTUHSC, or its subcontractor, fails to comply with the terms of the Contract, the TDCJ and the CMHCC will require that the TTUHSC take appropriate corrective actions to remedy the failure to comply.

1. Continued and ongoing failures to implement corrective actions to remedy deficiencies may subject providers to administrative and financial remedies. Such remedies may include a range of actions including termination of the arrangements in place for any or all services being provided by the party that fails to take appropriate corrective action.
2. The CMHCC is provided explicit legislative authority to "address problems found through monitoring activities by the department and health care providers including requiring corrective action if care does not meet expectations as determined by those monitoring activities" (Section 501.148 (a) (5), Texas Government Code). The assessment of administrative and/or financial remedies shall be subject to a finding by the CMHCC that there exists a continued and ongoing failure to correct an identified deficiency.
3. Upon issuing a finding of a continued and ongoing failure to correct the CMHCC may assess one or more of the following remedial actions by a majority vote. It is the intent of the CMHCC to assess such remedial actions in a progressive manner. The goal of such action is to enforce corrective actions and ensure that necessary services are provided in an appropriate, timely and effective manner. The level, type and duration of remedial actions assessed by the CMHCC may vary

with the seriousness, urgency and nature of the finding. Remedial actions available to the CMHCC include:

- a. In addition to specified reporting requirements, requiring more detailed and/or more frequent reporting requirements related to the area of deficiency, including written progress reports to the CMHCC signed by the responsible Medical Director;
- b. Withholding or suspending payment for services identified in the finding until corrective actions are implemented;
- c. Assigning an independent monitor to review and report on the progress made on the deficiency, at the expense of the responsible party;
- d. Transferring responsibility for providing the service or services in question to another party and reducing the payments received by the deficient party accordingly; and/or
- e. Other actions determined appropriate by the CMHCC up to and including termination of any or all of the Contract to provide services.

## Article X DISPUTE RESOLUTION

It is the intent of the parties to reach mutually acceptable resolutions to any disputes that may arise relating to the services and terms of this Contract through direct communication and informal means.

- A. The parties understand that most disputes can be resolved by an open sharing and understanding of each other's position and perspectives on the issue and with good faith discussions on how to reach mutually beneficial solutions. It is therefore agreed that efforts to resolve such disputes should first be attempted at the lowest organizational level appropriate to the issue.
- B. Should such efforts fail, the issue should be discussed and considered upwards through the respective organizational levels of the agencies involved up to and including the respective medical directors.
- C. Should face-to-face discussion between the medical directors fail to result in a mutually acceptable solution, the matter in dispute shall be referred to the Executive Director of the CMHCC for review and resolution in the case of administrative or operational matters or to the Chairman of the CMHCC in the case of clinical matters.

- D. In the event that the parties are still unable to reach a mutually agreeable solution, the Executive Director or Chairman of the CMHCC shall refer the matter to the full CMHCC. The CMHCC shall consider the issues involved and render a decision of the dispute. Unless specifically accepted elsewhere in this contract, such decisions shall be binding on all parties.

## Article XI TERM

- A. Regardless of the date of execution hereof, this Contract shall become effective December 1, 2011 and shall continue in full force until August 31, 2013 subject to the termination provisions contained herein or unless one hundred eighty (180) days written notice of termination is given by either party at any time during the Contract. The term of the Contract shall not transcend the biennium.
- B. Notice of intent to terminate shall be sent by certified mail, return receipt requested to: the Chief Financial Officer, Texas Department of Criminal Justice, P.O. Box 4015, Huntsville, Texas 77342-4015 and to the Executive Director, Correctional Managed Health Care, Texas Tech University Health Sciences Center, 3223 Loop 289, Lubbock, Texas 79423.

## Article XII GENERAL PROVISIONS

- A. This Contract shall be governed by and interpreted under the laws of the State of Texas.
- B. This Contract and any written modifications thereto constitute the sole contract of the parties. Oral agreements or understandings outside of the terms of this Contract shall be void.
- C. Any and all modifications of this contract shall be in writing, signed or initialed by all parties, and attached hereto.
- D. The TDCJ, TTUHSC and CMHCC, their respective agents, employees or subcontractors shall be entitled to reasonable access during regular business hours to all records relating to services in this Contract in the possession, custody or control of any of the aforementioned parties which are deemed necessary to the defense of any claim, notice or lawsuit arising from services covered by this Contract.

- E. The parties agree there should be mutual cooperation and efforts to resolve all claims and lawsuits alleging medical malpractice or other health-care related claims in a manner that best serves the mutual interests of the TDCJ, the TTUHSC, and the State of Texas. The parties recognize that such lawsuits and claims may allege more than one issue, routinely include issues other than health-care, and frequently involve multiple parties. As with most litigation involving state agencies and institutions, the parties understand that if such a lawsuit or claim is filed, the defense of those claims shall be coordinated through the Office of the Attorney General.
1. The parties further agree that the TTUHSC shall assume primary responsibility for defending health-care related claims with the appropriate assistance of the Attorney General and as applicable, the TDCJ.
  2. The TTUHSC shall be responsible for damages and costs arising from such health care related claims to the extent that those claims are held by a court to be a violation of law by the TTUHSC. The primary responsibility for defending non-health care related claims rests with TDCJ with appropriate assistance from the Attorney General and as applicable, the TTUHSC.
  3. The TDCJ shall be responsible for damages and costs arising from such claims to the extent that those claims are held by a court to be a violation of law by TDCJ.
  4. In a lawsuit where the TDCJ and the TTUHSC are both defendants and a cost of confinement deduction may be made by the state under Government Code Section 501.019, the TDCJ and the TTUHSC shall share the deduction in a ratio of 5:1. In a lawsuit where only the TDCJ or the TTUHSC is a defendant and a cost of confinement deduction may be made, the sole state defendant may claim the entire deduction.
  5. During the term of this Contract, to include extensions hereof, and to the extent authorized by law, the parties agree to notify the other in writing of actions, suits or proceedings filed against the TDCJ, the TTUHSC or their employees, or to which they are a party, before or by any court or governmental agency or body, which (1) might result in any material adverse change in the party's ability to perform its obligations under this Contract; or, (2) filed in any federal court, state court or federal or state administrative hearing within the State of Texas regardless as to any anticipated material adverse change in the party's ability to perform its obligations under this Contract. At the beginning of

the term of this Contract and within 30 days after each fiscal quarter, the TTUHSC shall provide to the TDCJ a listing of all pending litigation that meets the criteria listed above. Coordination of reporting obligations, mechanisms and schedules shall be the joint responsibility of the general counsels of the TDCJ, and the TTUHSC.

- F. To the extent permitted by the United States Constitution, the laws and statutes of the United States, the Constitution of the State of Texas, and the laws and statutes of the State of Texas, the parties to this Contract agree to make a good-faith effort to meet those goals and objectives set forth by the Governor and Legislature to assure participation by Historically Underutilized Businesses (HUB's) in contracts awarded for goods and services.
- G. The TDCJ and the TTUHSC are committed to a policy of equal opportunity and will not discriminate on the basis of race, color, sex, age, religion, national origin, veteran status or physical disability.
- H. The TDCJ and the CMHCC reserve the right to monitor provision of services under the terms of this Contract and related subcontracts and to inspect all records, charges, billings and supporting documentation as may be necessary. Such monitoring and inspection shall be conducted upon reasonable notice during normal business hours and may include, but not be limited to, onsite inspection, interviews of employees, patients and contracting providers and review of records.
- I. The undersigned contracting parties do hereby certify that, (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected parties of State Government, (2) the proposed arrangements serve the interest of efficient and economical administration of the State Government, and (3) the services, supplies and materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.
- J. Neither the TTUHSC or the TDCJ shall be required to perform any term, condition, or covenant of this Contract so long as such performance is delayed or prevented by acts of God, material or labor restriction by any governmental authority, riot, floods, hurricanes, or any other natural disasters, and which by the exercise of due diligence by any of the parties is unable, wholly or in part, to be prevented or overcome.

- K. The undersigned parties understand and agree that all persons employed by the TTUHSC and paid from the proceeds of this Contract shall be considered as general revenue funded employees for the purpose of allocating fringe benefit charges and, with the exception of the reimbursements outlined in Article III.G. of this Contract, the TDCJ shall not be responsible for such charges. Such charges shall be made against Teachers Retirement System (TRS), Employees Retirement System (ERS), or Comptroller or other appropriations as determined by the Comptroller of Public Accounts.

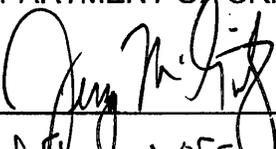
The undersigned contracting parties bind themselves to the faithful performance of this Contract:

TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

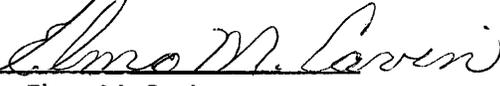
  
 \_\_\_\_\_  
 Chief Financial Officer  
 11/30/11

TEXAS TECH UNIVERSITY  
HEALTH SCIENCES CENTER

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

  
 Elmo M. Cavin  
 Executive Vice President for Finance and Administration  
 12/1/2011