

AGREEMENT BETWEEN  
CORRECTIONAL MANAGED HEALTH  
CARE COMMITTEE  
and  
TEXAS DEPARTMENT OF CRIMINAL JUSTICE  
FOR  
CORRECTIONAL HEALTH SERVICES  
FY 2010-2011 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 2010-2011 Performance Factors and Covered Facilities
- Exhibit E: ACA Audit Schedule

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FY 2010-2011

PREAMBLE

This Agreement is entered into by and between the CORRECTIONAL MANAGED HEALTH CARE COMMITTEE ("CMHCC") and the TEXAS DEPARTMENT OF CRIMINAL JUSTICE ("TDCJ"), 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. 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 TDCJ;

WHEREAS, the TDCJ has received appropriations intended to fund health care services for offenders incarcerated in its facilities and recognizes the CMHCC's authority to contract for healthcare services for and on behalf of the TDCJ;

WHEREAS, the CMHCC intends to contract with the University of Texas Medical Branch at Galveston ("UTMB") and with Texas Tech University Health Sciences Center ("TTUHSC") to furnish medical and psychiatric care to offenders, hereinafter referred to collectively as "University Providers"; and,

WHEREAS, to the extent possible, the University Providers, at the direction of the CMHCC shall provide such services through their own capabilities, through a sub-contract between UTMB and TTUHSC, the capabilities of UTMB or TTUHSC components or affiliates, 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 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.
- 1.2 Correctional Managed Health Care Committee ("CMHCC"): A committee established by Chapter 501, Subchapter E, Texas Government Code, consisting of two members each, at least one of whom is a physician, from the TDCJ, the University of Texas Medical Branch at Galveston, and Texas Tech University Health Sciences Center, and three members appointed by the Governor, two of whom must be physicians, responsible for developing, implementing, and monitoring the correctional managed health care services for offenders confined in institutions operated by TDCJ that are covered by this contract.
- 1.3 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.
- 1.4 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 Agreement the definition does not include inpatient/outpatient substance abuse or sex offender treatment.
- 1.5 Hospital Medical Records: All records pertaining to the history, diagnosis, treatment or prognosis of a person treated pursuant to the terms of this Agreement which are generated and maintained by the treating hospitals, including subcontractors, except for the discharge summary made a part of the offender’s medical file.
- 1.6 Medically Necessary: Services, equipment, or supplies furnished by a Participating Provider which, under the provisions of this Agreement, 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).

1.7 Medical Records: All records, to include electronic, pertaining to the history, diagnosis, treatment or prognosis of a person 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 University Providers in accordance with this Agreement. 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 except for the discharge summary made a part of the offender's medical file. Medical records for the purpose of this Agreement, 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 Agreement.

1.8 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 CMHCC, requires the provision of medical services to TDCJ offenders in excess of those services within the routine anticipation of this Agreement's Article II and therefore require reimbursement beyond the payment provisions of this Agreement.

- 1.9 Offsite Services: All Health Care provided to TDCJ offender patients outside of the TDCJ Unit including outpatient services, emergency services, hospitalization, and inpatient services.
- 1.10 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.
- 1.11 Participating Provider: All of the Health Care providers who provide covered services to TDCJ's offender patients.
- 1.12 Practitioner Subcontractor: A physician, dentist, optometrist, nurse practitioner, or physician assistant providing Health Care to TDCJ offenders.
- 1.13 TDCJ Employee: Individual who is an employee of the Texas Department of Criminal Justice.
- 1.14 TDCJ Offender: Those individuals confined by appropriate legal processes and incarcerated in the TDCJ's state owned facilities.
- 1.15 Texas Department of Criminal Justice ("TDCJ"): An agency of the State of Texas responsible for the incarceration of convicted felons.
- 1.16 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, contracting with CMHCC as a University Provider for the delivery of Health Care to TDCJ offenders.
- 1.17 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, contracting with the CMHCC as a University Provider for the delivery of Health Care to TDCJ offenders.

- 1.18 University Provider: The University of Texas Medical Branch at Galveston and Texas Tech University Health Sciences Center contracting with CMHCC to provide Health Care for TDCJ Offenders housed in facilities covered by this Agreement.

## 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 CMHCC 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 Agreement and listed in Exhibit D. This Agreement is intended to define the roles and responsibilities of the TDCJ, the CMHCC and the University Providers 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 CMHCC 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 Agreement. 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 or 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.
4. Health care-related administrative management services.
5. First aid kits, spill kits and violence 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. Hepatitis B vaccinations.
14. Dialysis services.
15. Pharmacy Services, subject to the requirement that all medications must be approved by and prescribed by legally authorized providers contracting with the CMHCC or its University Providers.
16. University Providers 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 healthcare personnel.

- E. **Offsite Services:** Health Care Offsite Services include in addition to the services detailed in the Offender Health Services Plan:
1. Emergency services at community hospitals, TDCJ hospitals or CMHCC's University Provider hospitals.
  2. Inpatient services at community hospitals, TDCJ hospitals or CMHCC's University Provider hospitals
  3. Outpatient services at community hospitals, TDCJ hospitals or CMHCC's University Provider hospitals (including infirmary and observation room services).
  4. Specialty physician consults, surgeries, and treatment.
- F. **Centralized Statewide Services:** The CMHCC shall provide for delivery of the following centralized services statewide by UTMB on behalf of the TDCJ:
1. Medical Records: maintain paper and electronic medical records archives, 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 TDCJ.
  4. Burial/Autopsies: coordinate and pay for burials and autopsies on a statewide basis for deceased offenders in units covered by this Agreement and listed in Exhibit D... A copy of the autopsy report shall be provided to the University Provider 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 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 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. The TDCJ shall continue to provide, at no additional cost, the CMHCC with two vehicles, including fuel and maintenance, to be used by the CMHCC for official purposes.
3. All capital equipment customarily included as part of the construction of any new TDCJ Unit Clinics occupied after the effective date of this Agreement. Prior written approval of 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. An interagency contract will be entered into between TDCJ and UTMB for the lease of the pharmacy.
10. Diagnostic II services performed as part of the initial or follow-up classification process.
11. Substance Abuse and Sex Offender Treatment programs and counseling.
12. 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.
13. Requesting, in consultation with the CMHCC, appropriations for funding of the correctional managed health care program from the Legislature.

14. Those administrative and security services historically provided in support of the UTMB/TDCJ Hospital physically owned and operated by UTMB at the UTMB Galveston site. UTMB shall remain responsible for utilities, maintenance, repair, medical services, ancillary services and other necessary support for the hospital consistent with historical practice.

15. Correctional officers be assigned to the medical department at all times when patients are present.

H. **Services Provided by the CMHCC:** The CMHCC shall provide the following services which shall be financed through this Agreement, including but not limited to:

1. Coordination of activities and duties of the Correctional Managed Health Care Committee.
2. Fiscal oversight, appropriation formulation, and budget allocation relating to the correctional managed health care program. TDCJ and the CMHCC agree that the base appropriations include health care services for twelve privately-operated facilities.
3. Legislative coordination of health care related matters.
4. Allocation of funding made available through legislative appropriations for correctional health care, cost containment studies, contracting for financial consulting and actuarial services as may be necessary and monitoring the expenditures of the University Providers to ensure that those expenditures comply with applicable statutory and contractual requirements. Copies of studies will be provided to the parties of this contract.
5. Development of procedures in conjunction with TDCJ and the University Providers for monitoring and reporting on the quality of care and enforcement of compliance with contract provisions, including requiring corrective action if care does not meet expectations as determined by quality of care monitoring activities.
6. Coordination of joint review committees.
7. New medical facility construction coordination.
8. Liaison activities between TDCJ and University Providers.

9. Coordination of statewide policy and resource issues related to telecommunications and information systems used for medical purposes. The CMHCC as necessary may develop a joint working group comprised of representatives of TDCJ and the University Providers to share and coordinate information related to technology activities including, but not limited to, hardware/software upgrades; new, replacement or significantly enhanced information systems; and communications network infrastructure upgrades.
  10. Specialized studies, including identifying and making recommendations to address the long-term needs of the correctional health care system
  11. Healthcare case management and utilization management studies performed for TDCJ.
  12. Serve as a dispute resolution forum in the event of disagreement between TDCJ and health care providers as authorized by Texas Government Code, Section 501.148 (a) (6) and as outlined in Article X.
  13. Providing the Texas Board of Criminal Justice with a report at its regularly scheduled meetings updating the Board on the CMHCC's policy decisions, the financial status of the correctional health care system and corrective actions taken or required.
- I. **Medical Transportation:** CMHCC, through its University Providers, shall provide or arrange for EMS transportation of patients to the UTMB/TDCJ Hospital in Galveston and / or freeworld hospitals based on an assessment and clinical evaluation by a qualified health care professional. 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 the UTMB/TDCJ Hospital at Galveston or a free world 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:** CMHCC shall provide health care services in support of TDCJ's twelve privately operated correctional facilities and State Jail facilities listed in Exhibit D in accordance with the terms of this Agreement.
- K. **UTMB Hospital Galveston Beds:** UTMB Hospital Galveston Beds are to be utilized only for those TDCJ offenders under the CMHCCC health care program.
- L. **Elective Cosmetic Surgery:** No proceeds from this Agreement shall be used to pay for elective cosmetic surgery without prior written approval of the TDCJ Division Director for Health Services.
- M. **Employee-Related Health Care Services:** The CMHCC, through its University Providers and 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, TDCJ Rider 14, 81<sup>st</sup> Legislature, 2009. 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 workers' compensation and/or TDCJ employees' state insurance, if specifically directed to do so by the CMHCC.

3. Tuberculosis screening for current employees seeking voluntary testing or current employees who have suffered occupational exposure, and Hepatitis B vaccination to eligible at-risk employees. Separate interagency agreements exist between the University Providers and 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. At the University Provider's option, reimbursement for testing may be sought by filing a standardized UB92 request form through the TDCJ Office of Preventive Medicine (for matching with the appropriate Worker's Compensation documentation) to the State Office of Risk Management. Payment for staging and/or dispensing of prophylaxis medication is the responsibility of TDCJ.
- N. **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.
- O. **Utilization Review and Management:** The CMHCC through its University Providers, 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 CMHCC and the TDCJ Health Services Division.
- P. **Credentialing:** The CMHCC shall require of its University 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 CMHCC or TDCJ upon request. The CMHCC shall require and approve procedures for the immediate notification of the CMHCC and TDCJ Health Services Division 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 University Providers 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 TDCJ on security clearances shall be provided within a reasonable time of submission of the required information to TDCJ, unless the parties mutually agree to extend the timeframe. Should the security clearance require more than five business days, the University Provider and the TDCJ Division Director for Health Services will be notified. In the event that there is a disagreement between the University Providers and TDCJ relating to a security clearance, the matter shall be referred to the TDCJ Division Director for Health Services for review and decision.

- Q. **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.
- R. **Correctional Officer Meals/University Provider Employee Services:** For the purpose of assisting the TDCJ in providing uninterrupted security staff coverage, the CMHCC agrees to arrange for meals to be provided to security staff accompanying offender patients to freeworld hospitals. In consideration for these services and to assist the CMHCC in providing uninterrupted medical staff coverage, the TDCJ shall provide CMHCC's University Provider employees (but not their subcontractors) with meals, use of barber facilities and access to laundry, commissary, recreational and other services in a manner and at costs consistent with those offered TDCJ employees.
- S. **Capital Assets:** The parties hereby acknowledge that TDCJ and the CMHCC's University Providers 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 Agreement 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 TDCJ to the CMHCC's University Providers) was effectuated by the Agreement between CMHCC and TDCJ dated August 24, 1995 and which expired August 31, 1997. The Capital Assets originally transferred or subsequently transferred under this prior agreement 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 CMHCC's University Providers 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 TDCJ as provided in this Agreement.
2. Subject to state inventory reporting requirements, annually in September, each of CMHCC's University Providers shall submit to 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 requests for disposal of equipment shall be submitted to TDCJ monthly.
3. The CMHCC's University Providers retain 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 Assets covered under terms of the construction warranty documents shall be handled in accordance with procedures of the TDCJ Facilities Division's warranty office. Should the University Provider determine that there is no longer a need for a Capital Assets originally transferred by TDCJ or the item falls below the value limitations set by the State Property Accounting System, the University Provider shall provide TDCJ with a written notice to that effect and request authorization either to dispose of the item in

accordance with University Provider procedures, remove the item from active inventory tracking requirements, or to transfer the item back to TDCJ for its use or disposal.

4. In the event that a current contract with one or both of the CMHCC's University Providers is canceled, those Capital Assets originally transferred, subsequently transferred or purchased with proceeds from this Agreement shall be identified through the State Property Accounting System by location code and transferred to 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 Agreement including the allocated share of costs for such Capital Assets benefiting programs other than TDCJ. The remaining share of such costs shall be allocated to those programs benefiting from the Capital Assets.
- T. **Medical Records:** All Medical Records of TDCJ offenders are the property of TDCJ. CMHCC and/or its University Providers have the right to retain copies of such Medical Records. The CMHCC's University Providers are hereby designated as custodian of all Medical Records for offenders.
1. CMHCC's University Providers will include provisions in their subcontracts allowing TDCJ access to hospital medical records on request, subject to medical confidentiality laws, and at no cost, including the patient discharge summary which shall be made part of the offender's permanent medical file. Any subcontractor which refuses to provide records on request shall be referred to the CMHCC for consideration and action.
  2. The CMHCC's University Providers are 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 UTMB and shall be utilized by TTUHSC. CMHCC 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. TTUHSC and UTMB agree 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. TTUHSC agrees to proportionately share the costs of such upgrades with UTMB provided that they have 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. UTMB 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.

U. **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 CMHCC's University Providers 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 University Providers. 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; and,
  - g. The provision of offender emergency medical care.
  - 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 agreement 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.

- V. **Continuity of Care:** CMHCC shall ensure that its University Providers, including their components, affiliates and subcontractors 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,

CMHCC shall ensure that all offenders who require continuity of care are identified with a CARS or PULHES score indicator of 3 or 4 and will be reported to TCOOMMI within a six (6) month period prior to release from custody. Upon request from TCOOMMI, University Providers will provide information related to the offender's current medical status, to be utilized by TCOOMMI staff in coordinating post-release placement and care.

- W. **Medically Recommended Intensive Supervision:** Subject to federal and state law, CMHCC shall ensure that its University Providers gather and report medical information necessary to facilitate the release of offenders on medically recommended intensive supervision to the Texas Correctional Office on Offenders with Medical or Mental Impairments(TCOOMMI). Requests for medical summaries in response to an application for medically recommended intensive supervision shall be responded to within five working days. The University Provider'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 University Providers. TCOOMMI shall provide monthly reports of the status of requests for medical summaries to the CMHCC Executive Director and the appropriate medical directors for review.

1. TCOOMMI shall inform University Providers of offenders who are approved for Medically Recommended Intensive Supervision. University Providers 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. TDCJ offender patients who are no longer eligible for health services pursuant to this Agreement and who are considered an inpatient of the TDCJ/UTMB Hospital in Galveston at the time they become no longer eligible will be transferred to a free-world hospital through the cooperative effort of the CMHCC, the University Providers and TCOOMMI. The CMHCC will be responsible for coordination of the referral to the receiving free-

world doctor / hospital to ensure admission of the patient upon arrival.. In the event that a TDCJ offender patient is an inpatient at a freeworld hospital at the time they become no longer eligible for services under this Agreement, TDCJ, TCOOMMI and the University Providers will work cooperatively to ensure the transfer of responsibility for continued care of the patient. For the purposes of this provision, "no longer eligible" means 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.

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

Y. **Emergency Preparedness and Response:** CMHCC shall ensure that its University Providers participate in unit, regional and central office emergency preparedness training activities of TDCJ. Generally, participation in emergency preparedness training activities will occur monthly on units, quarterly at the regional level, and annually for agency activities. CMHCC shall also ensure that a University Provider mental health staff person participate as a bona fide member of the TDCJ hostage negotiation teams.

### Article III PAYMENT PROVISIONS

A. **Payment Schedule:** The TDCJ agrees to make payments to the CMHCC in accordance with the following schedule:

1. In Fiscal Year 2010: four payments as outlined in the schedule below:

<u>Date Payment is Due</u>	<u>Amount Due</u>
September 15, 2009	\$116,273,184
November 15, 2009	\$114,995,457
February 15, 2010	\$117,550,911
May 15, 2010	\$117,550,911

2. In Fiscal Year 2011, four payments as outlined in the schedule below:

<u>Date Payment is Due</u>	<u>Amount Due</u>
September 15, 2010	\$115,547,436
November 15, 2011	\$114,277,684
February 15, 2011	\$116,817,189
May 15, 2011	\$116,817,189

3. In Fiscal Year 2011, contingent upon completion of renovations to the Marlin Medical Facility:
- a. Startup equipment funding in the amount of \$773,000 to be paid September 15<sup>th</sup> or 60 days prior to the anticipated occupancy date whichever is later; and,
  - b. Annual operating funding in the amount of \$4,070,986, to be paid in quarterly installments in conjunction with the payments in paragraph III.A.2 above, as follows:

<u>Date Payment is Due</u>	<u>Amount Due</u>
September 15, 2010	\$1,014,958.15
November 15, 2010	\$1,003,804.77
February 15, 2011	\$1,026,111.54
May 15, 2011	\$1,026,111.54

The above amounts assume a September 1, 2010 occupancy date. Should the occupancy occur later than that date, the amount of such payments shall be prorated based on the actual occupancy date.

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

- 1. The CMHCC to submit to the Legislative Budget Board and Governor a quarterly report detailing:
  - a. correctional managed health care actual and projected expenditures for on-site, off-site and pharmaceutical costs;
  - b. health care cost for inmates over age 55 including utilization data;
  - c. other health care information determined by the Office of the Governor and the Legislative Budget Board;
  - d. all monies held in reserve during any quarterly reporting period by the Correctional Managed Health Care Committee or for Correctional Managed Health Care by the University of Texas

- Medical Branch at Galveston and the Texas Tech University Health Sciences Center; and
- e. Such reports shall be submitted on a quarterly basis. (Rider 41, Article V, SB 1, 81st Legislature, 2009)
2. For the purpose of offsetting operational shortfalls occurring in correctional managed health care and out of funds appropriated above, the Department shall transfer funds as necessary into Strategy C.1.8., Managed Health Care, for payment to the Correctional Managed Health Care Committee to address any managed health care operational shortfalls for fiscal years 2010-11, not to exceed \$5 million for the biennium. If the Department and Committee do not agree on transfer amounts deemed necessary, supporting documentation shall be provided to the Governor and Legislative Budget Board who shall make the final decision. (Rider 42, Article V, SB 1, 81st Legislature, 2009)
  3. Limitation of Expenditures: The Correctional Managed Health Care Committee shall not transfer any funds in excess of capitation rates established in contracts to the University of Texas Medical Branch or the Texas Tech University Health Sciences Center without prior approval of the Governor and the Legislative Budget Board. Any funds appropriated for Correctional Managed Health Care remaining unexpended or unobligated on August 31 of each fiscal year, shall lapse to the General Revenue Fund. (Rider 61, Article V, SB 1, 81st Legislature, 2009)
  4. Managed Health Care - Appropriation Transfer Between Fiscal Years: In addition to transfer authority provided elsewhere in this Act, the Correctional Managed Health Care Committee may transfer appropriations in an amount not to exceed \$20 million made for fiscal year 2011 to fiscal year 2010, subject to the following conditions provided by this section:
    - a. Transfers under this section may be made only if:
      - (1) costs of providing correctional managed health care exceed available funding due to increases in prison population, increases in medical care needs among the prison population, or increases in health care staffing costs, or
      - (2) for any other emergency expenditure requirements, including expenditures necessitated by public calamity.

- b. A transfer authorized by this section above must receive the prior approval of the Governor and the Legislative Budget Board.
- c. the Comptroller of Public Accounts shall cooperate as necessary to assist the completion of a transfer and spending made under this section.

In addition to the above legislative requirements (Rider 83, Article V, SB1, 81<sup>st</sup> Legislature, 2009), the University providers must have approval of the Correctional Managed Health Care Committee prior to requesting the spend forward authority,

- C. **Basis for Payments:** The parties understand and agree that the payments outlined herein cover the services outlined in this Agreement for only those units and maximum populations listed in Exhibit D of this Agreement. The provision of services for any 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 Agreement 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 Agreement. 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 Agreement. 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 Agreement should the volume, type or intensity of the Health Care services required to be provided by the CMHCC increase or decrease significantly during the term of this Agreement, 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 Agreement is in effect, additional services beyond those contemplated by the Agreement are requested, the CMHCC, TDCJ and the University Providers 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 Agreement shall be used to estimate costs for additional services, as applicable.

- E. **Timely Payments Required:** The CMHCC and TDCJ agree that failure by the TDCJ to make payments in a timely manner and as agreed to by the CMHCC shall immediately relieve the CMHCC and its University Providers of all contractual obligations directly and indirectly associated with this Agreement.
- F. **Reimbursement for Natural or Manmade Catastrophe:** In the event of a Natural or Manmade Catastrophe, the CMHCC shall be reimbursed by the TDCJ for all actual Health Care expenses specifically related to the catastrophe and provided to TDCJ's Offenders and Employees provided the CMHCC has reviewed and verified the expenses and certified the event as a Natural or Manmade Catastrophe.
- G. **Unemployment and Worker's Compensation Reimbursements:** The CMHCC and its University Providers shall be responsible for reimbursements for their employees required under Article IX, Sections 15.01 and 15.02, SB1, General Appropriations Act, 81st Legislature, Regular Session, 2009.
- 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 Agreement.
- I. **Material Changes Cause for Cancellation:** The undersigned parties agree that any material change in the underlying rationale for this Agreement beyond the control of CMHCC, including but not limited to legislative mandates, court mandates, funding decisions, natural or manmade catastrophes, shall, at the sole election of the CMHCC, be cause to discharge CMHCC and its University Providers of its obligations to perform Health Care Services under this Agreement. The CMHCC shall provide 180 days written notice of Agreement termination as outlined in Article XI of this Agreement.
- J. **Change in Appropriations:** The undersigned parties understand and agree that payment for services outlined in this Agreement are based on appropriations for psychiatric care (Strategy C.1.7) and correctional managed health care (Strategy C.1.8) found in SB 1, 81st Legislative Session, 2009. 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 agreement to be renegotiated and/or canceled by any of the parties.

**K. Restrictions on Expenditures:**

1. All expenditures made from funds allocated through this Agreement to the CMHCC and subsequently paid to the University Providers shall be for services provided to TDCJ under the terms of this Agreement. The CMHCC shall through its contract monitoring procedures ensure that the University Providers 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 University Providers under the terms of this Agreement, 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 University Providers may request that additional exceptions to the restrictions on expenditures be approved by a majority vote in open session of the CMHCC.
  - b. Notwithstanding paragraph a above, in no event may the funds earned under this Agreement be expended for the following items:
    - 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 Government Code Section 2113.201; and,
    - 4) costs related to staging employee celebrations such as retirement parties, special recognitions, graduations, promotions or similar such events.
3. The University Providers 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 CMHCC 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 CMHCC 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 CMHCC, the CMHCC staff shall review the supporting detail and rationale for the initiative. At its option, the CMHCC 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 Agreement acts as acceptance of the authority of the State Auditor's Office, 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 University Provider and the requirement to cooperate is included in any subcontract it awards.
  
- N. **Marlin Medical Facility Conversion:** The parties hereby acknowledge that Rider 72 Article V, SB1, 81st Legislature, Regular Session 2009, authorizes \$4,843,986 in correctional health care funding for FY 2011 at the Marlin Medical Facility. Those funds are contingent upon the completion of renovations to the Marlin Medical Facility.. The parties agree to coordinate on scheduling occupancy and operations of the facility.
  
- O. **Studies Required by the Legislature:** The parties hereby acknowledge that the following referenced studies are required by legislative action. The parties agree to work cooperatively in preparing these studies.

1. A study to identify and evaluate mechanisms to lower the cost of, or increase the quality of care in, health or pharmacy services and submit a report to the Legislative Budget Board and the Governor no later than May 1, 2010 as required by HB 4586, 8<sup>1st</sup> Legislature, Regular Session, 2009.

#### Article IV FINANCIAL REPORTING AND MONITORING PROVISIONS

- A. **Financial Reports:** The CMHCC shall develop and distribute financial reports detailing all expenditures made to provide services under this Agreement and reflecting the actual costs of providing healthcare. The University Providers 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 Agreement including information such as, but not limited to:
    - a. A standard financial report summary (summary Level information totals and by University Provider)
    - 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)
    - f. Supporting Detail: Payments to University Hospital/Physician
  2. Monthly reports detailing all actual revenue applied to the contract including both payments from the contracts and benefit reimbursements made directly to the universities.
  3. Reports identifying all personnel assigned to the TDCJ contracts who also provide services for other university 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 capitation payments compared with actual costs and revenues.
  5. Quarterly reports required for the Legislative Budget Board and Governor by appropriation rider and other monthly financial updates as may be necessary.
  6. Completion of schedules relating to the Annual Financial Report meeting the requirements of Section 2101.011 of the Texas Government Code as directed by the State Comptroller's Office.
  7. Other financial reports required by the CMHCC.
- B. **Reporting Formats and Schedules:** The CMHCC and University Providers 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 CMHCC. CMHCC Policy Statement F-01 outlines the financial reporting requirements and that policy statement and any subsequent revision to that policy statement adopted by a majority vote of the CMHCC is hereby incorporated into this Agreement. Monthly financial data is due to the CMHCC from the University Providers 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 CMHCC, with the cooperation of the University Providers 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 Agreement. Such activities shall include, but not be limited to:
1. Provisions for 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. 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 TTUHSC will be 200 hours per year.
  2. Procedures for testing samples of expenditures to review and verify supporting documentation.

3. Provisions for CMHCC staff, internal auditors or agents of the CMHCC to access, test and validate transactions charged to the 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 University Providers, TDCJ and the CMHCC as a part of the routine financial reports issued by the CMHCC.

#### Article V CONTRACT AMOUNT

In the absence of a Natural or Manmade Catastrophe, or unless provided otherwise in this Agreement, the amount of this Agreement shall not exceed \$934,673,947 for the FY 2010-2011 biennium.

#### 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, Chapter 494, the Texas Government Code, and existing classification criteria. The Texas Department of Criminal Justice 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. 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 and the CMHCC. Nothing

contained herein shall be construed as creating the relationship of employer and employee between the CMHCC, the University Providers, the Practitioner Subcontractors, and other subcontractors. The CMHCC, the University Providers and the Participating Providers shall each be deemed at all times to be independent contractors. In carrying out the terms of this Agreement, the CMHCC and the University Providers shall select their 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 Section 501, Subchapter E, Texas Government Code, the CMHCC is 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) (7) 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 CMHCC's medical care providers 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 CMHCC's medical care providers shall communicate the results of their monitoring activities, including a list of and the status of any corrective actions to the CMHCC and to the Texas Board of Criminal Justice.

5. To ensure the effectiveness and efficiency of such efforts, the CMHCC, in coordination with and in consideration of input from TDCJ and its University Providers, have agreed to key principles involved in monitoring the correctional health care system, including monitoring operational results to determine overall performance or compliance. These agreements include:
  - a. definitions of the roles and responsibilities of the CMHCC, TDCJ and the University Providers 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 and to the parties;
  - 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 CMHCC's University Providers monitor all subcontractors with whom the University Providers contract for service and report the results of such monitoring to the CMHCC. Performance standards and monitoring criteria shall meet as a minimum, performance standards set forth in this Agreement for the CMHCC's University Providers. Performance standards and monitoring criteria shall be included in each subcontract executed by the CMHCC's University Providers under this Agreement, and provisions for damages and cancellation of the subcontract if the performance measures are not attained by the subcontractor;
  - g. definition of the roles of the CMHCC's University Providers in assisting TDCJ and responding to 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:** TDCJ and the CMHCC's University Providers agree to obtain and maintain ACA accreditation as required in Article IX.A in accordance with Exhibit E. The TDCJ and applicable CMHCC University Provider further agree to share the cost of accreditations and reaccreditations for these facilities on an equal basis. The TDCJ agrees to pay the entire ACA accreditation or re-accreditation fee for the facility and bill the University Providers as the facilities are accredited or re-accredited for their portion per Exhibit E. Copies of accreditation reports will be provided to the CMHCC and the TDCJ Health Services Division by the University Providers upon request.
- 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 Agreement. 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. 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. Such assessment mechanisms shall define tolerable error rates and performance standards. Following each Operational Review, the status of compliance with the policies shall be documented in a written report provided to the University Provider. Corrective action plans shall be developed for any identified deficiencies 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 TDCJ and the CMHCC's University Providers 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 University Provider Medical Director 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 University Provider or the CMHCC, any unit may be required to report access to care monitoring results on a 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 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 CMHCC and TDCJ Health Services Division staff 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 change to the hours, days or type of personnel assigned to a facility shall require notice as soon as practical under the circumstances to the CMHCC and TDCJ. 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 Agreement 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 CMHCC may include requesting that an evaluation of the adequacy of the staffing levels be prepared and submitted to the CMHCC for review. A staffing expert may be hired to evaluate staffing adequacy by any of the parties to this Agreement, 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 Agreement.

- H. **Peer Review Committees:** The CMHCC shall require that each University Provider'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 University Provider's peer review committees which relate directly to health and medical services provided to TDCJ patients, with the exception that the University Provider'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 University Provider. The TDCJ appointee or independent third party designee to the peer review committee shall abide by the University Provider's various bylaws, rules, regulations and policies governing the institution.
1. University Providers 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 University Provider has deemed that no conflict of interest exists. Subject to the University Provider's due process requirements, TDCJ's representative may request corrective action be taken against the provider in question, including the removal from contact with TDCJ patients 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:** CMHCC, its University Providers and 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 CMHCC's University Providers may request an extension of time to pursue further investigation or review of a grievance or complaint. The CMHCC shall require that its University Providers submit to the CMHCC and TDCJ Health Services Division copies of any inquiries relating to the provision of health care services covered by this Agreement 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 Agreement shall apply.

- J. **Joint Committee Processes Required:** The CMHCC, through TDCJ and its University Providers, shall provide additional coordination and monitoring of health care services through participation in joint committees as outlined in Health Services Policy and Procedures.

## Article IX PERFORMANCE MEASURES

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

- A. **Standards and Requirements:** CMHCC, through arrangements with the University Providers, 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. CMHCC agrees to require the University Providers 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 Agreement 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 Agreement, 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 48 hours, Sunday through Thursday or within 72 hours on Friday and Saturday.
  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 seven 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 48 hours Sunday through Thursday or 72 hours on Friday and Saturday.
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 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 48 hours Sunday through Thursday or 72 hours on Friday and Saturday.
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 7 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 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 Agreement 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

healthcare 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 Output Measures:** The following performance measure output data is required to be collected by the university providers and provided to TDCJ and the CMHCC for reporting to the Legislature on a quarterly basis. Deviations of greater than five percent from the projected targeted amounts require a written explanation of variance be provided.

1. **Psychiatric Inpatient Average Daily Census:** Calculated as the total average daily census of the psychiatric inpatients. The performance expectation for this measure is 1,963.
2. **Average number of Offenders under Correctional Managed Health Care:** Calculated as the average daily population served by the correctional managed health care program each month. The performance expectation for this measure is 151,734.

**E. Remedy for Non-Performance:** The CMHCC shall monitor the University Provider's compliance with the terms of this Agreement. In

the event that a University Provider, or its subcontractor, fails to comply with the terms of the Agreement, the CMHCC will require that the University Provider 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) (7), 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 agreement 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 excepted elsewhere in this agreement, such decisions shall be binding on all parties.

## Article XI TERM

- A. Regardless of the date of execution hereof, this Agreement shall become effective September 1, 2009 and shall continue in full force until August 31, 2011 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 Agreement. The term of the Agreement shall not transcend the biennium.
- B. Notice of intent to terminate shall be sent by certified mail, return receipt requested to: the CMHCC, Executive Director of the Correctional Managed Health Care Committee, 1300 11th Street, Suite 415, Huntsville, Texas 77340 and to the TDCJ, Director for Health Services, P. O. Box 99, Huntsville, Texas 77342-0099.

## Article XII GENERAL PROVISIONS

- A. This agreement shall be governed by and interpreted under the laws of the State of Texas.
- B. This Agreement and any written modifications thereto constitute the sole agreement of the parties. Oral agreements or understandings outside of the terms of this agreement shall be void.
- C. Any and all modifications of this agreement shall be in writing, signed or initialed by all parties, and attached hereto.
- D. CMHCC and TDCJ, their respective agents, employees or subcontractors shall be entitled to reasonable access during regular business hours to all records relating to services in this Agreement 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 Agreement.
- 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 CMHCC, its responsible University Provider, TDCJ 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 CMHCC's responsible University Provider shall assume primary responsibility for defending health-care related claims with the appropriate assistance of the Attorney General and as applicable, TDCJ.

2. The University Providers shall be responsible for damages and costs arising from such healthcare related claims to the extent that those claims are held by a court to be a violation of law by the University Providers. The primary responsibility for defending non-health care related claims rests with TDCJ with appropriate assistance from the Attorney General and as applicable, the CMHCC's University Providers.

3. 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 TDCJ and a University Provider are both defendants and a cost of confinement deduction may be made by the state under Government Code Section 501.019, TDCJ and the University Provider shall share the deduction in a ratio of 5:1. In a lawsuit where only TDCJ or a University Provider 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 Agreement, to include extensions hereof, and to the extent authorized by law, CMHCC will require that the University Providers and TDCJ notify the CMHCC and one another in writing of actions, suits or proceedings filed against the TDCJ, UTMB or 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 CMHCC's, TDCJ's, UTMB's or TTUHSC's ability to perform its obligations under this Agreement; 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 CMHCC's, TDCJ's, UTMB's or TTUHSC's ability to perform its obligations under this Agreement if the facts alleged state that the cause of action or complaint arose on a TDCJ facility; or (3) brought by or on behalf

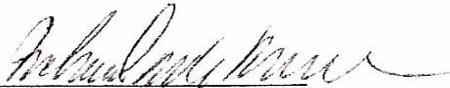
of a State of Texas offender regardless as to any anticipated material adverse change in the CMHCC's, TDCJ's, UTMB's or TTUHSC's ability to perform its obligations under this Agreement. At the beginning of the term of this Agreement and within 30 days after each fiscal quarter, each of the parties shall provide to the CMHCC and 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 TDCJ, UTMB and 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 agreement 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 Business (HUB's) in contracts awarded for goods and services.
- G. The CMHCC and the TDCJ 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 CMHCC and TDCJ reserve the right to monitor provision of services under the terms of this Agreement 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 TDCJ or CMHCC shall be required to perform any term, condition, or covenant of this agreement so long as such performance is delayed or prevented by acts of God, material or labor restriction by

funded employees for the purpose of allocating fringe benefit charges and, with the exception of the reimbursements outlined in Article III.G. of this Agreement, the CMHCC shall not be responsible for such charges. Such charges shall be made against Teachers Retirements System (TRS), Employees Retirement System (ERS), or State Comptroller or other appropriations as determined by the State Comptroller of Public Accounts.

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

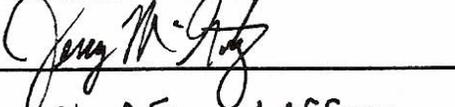
Reviewed by Legal Counsel as to Form and Content:

For the TDCJ: 

CORRECTIONAL MANAGED HEALTH  
CARE COMMITTEE

TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE

By: 

By: 

Title: Executive Director

Title: Chief Financial Officer

Date: September 14, 2009

Date: 9/14/09