

HEALTH CARE SERVICES CONTRACT

This Contract, a professional services Contract under the law of the State of Delaware, is made this 4th day of May, 2010, by and between Correct Care Solutions, LLC (“CCS”) and the State of Delaware Department of Correction (“DOC”).

RECITALS

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

WHEREAS, DOC has asked prospective vendors to submit proposals in relation to Contract No. 09024; and

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

NOW, THEREFORE, in consideration for the mutual promises contained herein, the parties enter into this Contract and each of the documents that comprise this Contract as specifically incorporated by reference herein and revoke any previous Contracts between the parties. All references to the “State”, “Delaware”, “DDOC”, or the “Department of Correction” shall be deemed as references to DOC. All references to CCS, “Correct Care” or “Correct Care Solutions, LLC” shall be deemed as a reference to CCS. The terms and conditions of this Contract are contained within this DOC/CCS professional healthcare services Contract which shall include and incorporate by reference as fully set forth herein the following documents:

- This Contract;
- The DOC Request for Proposals for Contract No. 09024 and any amendments thereto (Exhibit A); and

- CCS Final Pricing Proposal and Performance Incentives (Exhibit B);
- CCS' Proposal in Response to Exhibit B (Exhibit C).

NOW THEREFORE, DOC and CCS mutually agree as follows:

1. **Contract Term.** Subject to the other terms and provisions hereof, the initial term of this Contract will be for two (2) years commencing on July 1, 2010 (the "commencement date") and shall terminate, unless renewed, on June 30, 2012 (the "natural termination date"). The Contract may be mutually renewed for two (2) additional one (1) year renewal periods.

2. **Contract Compensation.**

a. Base Compensation. DOC and CCS agree on an Annual Base Compensation as set forth below:

<u>Year #</u>	<u>Period Covered</u>	<u>Annual Base Amount</u>	<u>Monthly Base Amount</u>
1	7/1/2010-6/30/2011	\$29,600,244.23	\$2,466,687.02
2	7/1/2011-6/30/2012	\$30,488,251.56	\$2,540,687.63
3 - 4	7/1/2012-6/30/2014	IN THE EVENT THE PARTIES MUTUALLY AGREE TO EXTEND THIS CONTRACT PURSUANT TO PARAGRAPH 1, THE PARTIES AGREE THAT THE ANNUAL BASE COMPENSATION FOR EACH OF YEAR 3 AND YEAR 4 (AS APPLICABLE) WILL BE INCREASED TO REFLECT A THREE PERCENT (3%) INCREASE OVER THE IMMEDIATELY PRECEDING ANNUAL BASE COMPENSATION.	

The parties further agree that CCS shall submit to DOC an invoice on or about the 1st day of each month commencing on August 1, 2010 for the applicable Monthly Base Amount set forth above. DOC shall pay each invoice within 30 days of receipt. All Invoices shall be submitted in electronic format to:

John Oldigs
 Senior Fiscal Administrative Officer
 245 McKee Rd.

Dover, DE 19904
john.oldigs@state.de.us

CCS agrees that it is responsible for offsite healthcare services delivered to incarcerated offenders within the custody of DOC for the first 24 hours without regard to its ability to negotiate Medicaid pricing levels. The parties agree that the Base Compensation set forth above is conditioned upon CCS being able to pay all inpatient services (the term "inpatient services" means offsite healthcare services delivered to incarcerated offenders within the custody of DOC beginning after twenty-four (24) hours of housing outside a DOC facility) at Medicaid pricing levels. In the event such pricing levels are not available to CCS, then the parties agree to renegotiate the amount of the Base Compensation in order to reflect such increase in costs to CCS for inpatient services. CCS will negotiate in good faith with hospitals providing services to DOC inmates and attempt to obtain such Medicaid pricing levels. Any resulting increase in Base Compensation to CCS shall be effective on date that Medicaid pricing for inpatient services is no longer available to CCS.

- b. Performance Incentive Compensation. The parties agree that in addition to the Base Compensation set forth above, commencing on January 1, 2011, CCS shall be entitled to earn quarterly Performance Incentive Compensation based upon the Performance Incentive benchmarks set forth in Tables A and B to Exhibit B to this Contract. CCS will provide quarterly tracking reports to the DDOC that will include actual performance and benchmark data for each DDOC facility, as applicable. The parties agree that the manner of assessing the performance of CCS under this Performance Incentive Compensation Program will be a

combination of gathering data through DOC's audit function and through CCS providing certain agreed-upon data. The parties agree that DOC shall maintain exclusive discretion to reasonably determine whether CCS' performance meets the benchmarks set forth in Tables A and B to Exhibit B to this Contract. Upon the request of CCS, DOC shall provide the methodology and underlying data which supports its determination as set forth herein. The parties shall mutually agree upon reporting requirements, formatting and timing of quarterly Performance Incentive payments prior to commencement of the Performance Incentive Compensation Program on January 1, 2011. Under the Performance Incentive Compensation Program, CCS shall be entitled to earn as much as \$223,000.00 for Year 1 (July 1, 2010 through June 30, 2011) and \$446,000.00 for Year 2 (July 1, 2011 through June 30, 2012) and for each of any years this Contract is extended.

- c. Variable Cost Fluctuations. The payments set forth above, anticipate a combined average daily inmate population of 7,000 ("ADP"). In the event the ADP fluctuates greater or lower than anticipated above, the following adjustments to the Base Compensation shall be made as follows:

If the Average Daily Population for any quarter under the term of this Contract is less than 6,300, a decrease in the amount due to CCS shall be calculated as follows: $(6,300 - \text{Average Daily Population}) \times \blacksquare \times$ (Number of days in quarter). This amount will be deducted from the invoice payment to CCS immediately following the quarterly

determination, and such invoice shall specifically set forth the calculation of such deduction. If the Average Daily Population for the quarter exceeds 7,700, an increase in the amount due to CCS shall be calculated as follows: $(\text{Average Daily Population} - 7,700) \times \text{[REDACTED]} \times (\text{Number of days in quarter})$. This amount will be paid separately to CCS on or before 30 days after receipt of an invoice from CCS for such per diem increases, and such invoice shall specifically set forth the calculation of such increase. Average daily population as stated above shall be determined from the DOC records and calculated and adjusted as set forth in this paragraph, and shall be calculated by adding, for a given month the daily inmate population contained in the DOC's daily status reports and dividing such sum by the number of days in the month. The per diem adjustment is not intended to address any potential need to increase (or decrease) fixed costs (such as changes in needed staffing positions) which might prove necessary if the ADP grows to be greater than 7,700 or if the ADP falls below 6,300 and such increase or decrease in ADP is determined to be permanent in nature or is reasonably expected to be sustained for at least a period of 9 months or greater. Moreover, the per diem adjustment is not intended to address a change in scope of services arising from the DOC's determination to open or close new sites or expand or decrease services provided hereunder.

3. ***Superseding Modifications to Contract Documents.*** The following terms and conditions shall, in addition to the other paragraphs of this Contract, supersede any language in the Exhibits to this Contract: CCS agrees to add 4.0 Full Time Equivalency (“FTE”) Pharmacy Technician positions in addition to the Staffing Requirements set forth in Exhibit A. Such increase in positions is included in the Base Compensation Amounts set forth above.

4. ***Major Equipment Purchases.*** The parties acknowledge that DOC shall pay for any equipment which may be necessary, required and requested by CCS under the operation of this Contract which individually exceeds \$500.00 per individual item. All equipment, supplies, and fixtures currently in place at or located within the facilities at which services shall be provided shall be made available to CCS at no cost to or credit against CCS in connection with the performance of its services hereunder. In addition, DOC shall provide at its cost and expense all reasonable maintenance services required and requested by CCS in connection with any equipment or any part of the facilities.

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

Contract. Notwithstanding, the parties agree that failure by CCS to obtain any single agreed-upon Performance Incentive Compliance Rate forth on Tables A or B in Exhibit B attached hereto does not *de facto* indicate noncompliance with the terms of this Contract.

6. ***Legal Requirements.*** CCS shall maintain all legally required licenses, certifications, insurance coverages, as well as the performance bond required herein, as not otherwise stated by this Contract, during the entire term of this Contract.

7. ***Professional Liability Insurance and Bond Coverage.*** Notwithstanding the requirements set forth in DOC Request for Proposals for Contract No. 09024 and any amendments thereto (Exhibit A), CCS shall provide evidence of professional liability insurance in the amount of \$2m/\$4m, and shall obtain a performance bond in the amount of \$3,000,000 for every year of the Contract.

8. ***Expense of Performance.*** Unless provided otherwise in this Contract, all expenses incurred in the performance of the services are to be paid by CCS. If this Contract specifically provides for expense reimbursement, CCS shall be reimbursed only for reasonable expenses incurred by CCS in the performance of the services.

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

10. ***Acceptance; Non-Waiver.*** Permitted or required approval by Delaware of any services furnished by CCS shall not in any way relieve CCS of responsibility for the professional and technical accuracy and adequacy of its work. DOC's review, approval, acceptance, or payment for any of CCS' services herein shall not be construed to operate

as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and CCS shall be and remain liable in accordance with the terms of this Contract and applicable law for all damages to Delaware caused by CCS's performance or failure to perform under this Contract. The parties agree that CCS shall not in any manner be held liable or responsible for losses, expenses, fees, or damages arising from any suits, actions, or claims related to or arising out of any negligence, any intentional act, or any omission by any non-CCS person, entity, agency, governmental authority or their respective employees, agents, contractors, subcontractors, or officials.

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

12. ***Confidentiality.*** To the extent permissible under federal law and 29 *Del. C.* § 10001, *et seq.*, the parties to this Contract shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Contract. Nothing within the terms of this Contract or any Exhibits thereto shall imply or infer that the parties agree not to protect any and all documents deemed to be confidential or privileged under common laws and statutory laws of the State of Delaware and/or under Federal laws and regulations, including but not limited to HIPAA, peer review, attorney-client privilege and work product protection laws and regulations.

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

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

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

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

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

17. ***State Appropriations Mandatory Condition of State Performance.*** Validity and enforcement of this Contract is subject to appropriations by the General Assembly of the State of Delaware of the specific funds necessary for Contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Contract, and absent such action this Contract shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which an appropriation is available or upon the exhaustion

of funds. Notwithstanding any other provisions of this Contract, this Contract shall terminate and Delaware's obligations under it shall be extinguished at the start of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due. Delaware will notify CCS at its earliest convenience in the event the State of Delaware fails to appropriate such monies sufficient for any services hereunder this Contract.

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

19. ***Termination for Convenience.*** Either party may terminate the Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least one hundred and twenty (120) days before the effective date of such termination. In that event, all finished or unfinished documents, charts, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the Contract shall, at the option of the DOC, become its property, and the Vendor shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to the DOC. If the Contract is terminated by either party by convenience, then CCS shall be paid for its services through the effective date of such termination. Provided however, that if less than 60 percent of the services covered by the Contract have been performed upon the effective date of termination, the Vendor shall be reimbursed (in addition to the above payment) for that portion of actual out of pocket expenses (not otherwise reimbursed under the Contract) incurred by the Vendor during the Contract period which are directly attributable to the uncompleted portion of the services covered by the Contract. Except as set forth herein, in the event of a termination for convenience, CCS shall only be paid for services performed through the effective date of termination.

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

21. ***Public Records; DOC's Right to Inspect.*** CCS shall maintain all public records, as defined by 29 *Del. C.* § 502(1), relating to this Contract and its deliverables for the

time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Contract, authorized representatives of Delaware may inspect or audit CCS' performance and records pertaining to this Contract at the CCS business office during normal business hours.

22. ***Proof of Insurance.*** Before any work is done pursuant to this Contract, the Certificate of Insurance and/or copies of the insurance policies, referencing the Contract number stated herein, shall be filed with the State. The certificate holder is as follows: James Welch, Bureau Chief for the Bureau of Correctional Healthcare Services for the Delaware Department of Correction. In no event shall the State of Delaware be named as an additional insured on any policy required under this Contract. CCS warrants that the amounts of insurance required by this Contract will remain in full force and effect during the full term of this Contract without lapse or diminution of required coverage limitations.

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

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

- a. This Contract;

- b. The DOC Request for Proposals for Contract No. 09024 and any amendments thereto (Exhibit A)
- c. The CCS Final Pricing Proposal and Performance Incentives (Exhibit B);
and
- d. CCS' Proposal in Response to Exhibit A (Exhibit C).

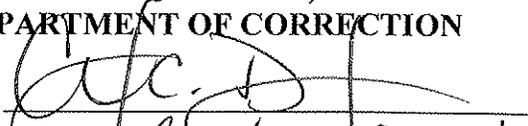
In the event of a conflict, contradiction, vagueness and/or ambiguity with respect to or in relation to the contents of the above-listed documents, the above-listed numerical order shall dictate and control the terms of this Contract such that the authority of each successive document is controlled by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

25. ***Entire Agreement; Interpretation; Modification.*** This Contract and its Appendices shall constitute the entire Contract between DOC and CCS with respect to the subject matter of this Contract and shall not be modified or changed without the express written consent of the parties. The provisions of this Contract supersede all prior oral and written quotations, communications, Contracts and understandings of the parties with respect to the subject matter of this Contract. If the scope of any provision of this Contract is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Contract shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law. No waiver of any provision of this Contract shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

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

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

**STATE OF DELAWARE,
DEPARTMENT OF CORRECTION**

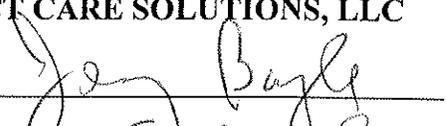
By: 

Print Name: Carl C. Danberg

Title: Commissioner

Date: 4 May 2010

CORRECT CARE SOLUTIONS, LLC

By: 

Print Name: Jerry Boyle

Title: CEO / President

Date: 5/4/2010